

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2010-131**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ENABLING AN ASSIGNMENT OF CONTRACT BY AND BETWEEN THE CITY OF MARATHON AND FOUNTAIN ENGINEERING, INC. TO CONSTRUCT SERVICE AREA 3-0 WASTEWATER COLLECTION SYSTEM FROM 11<sup>TH</sup> STREET TO 30<sup>TH</sup> STREET OCEAN SIDE IN THE AMOUNT OF \$3,178,745.48; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the "City") entered into a contract with Conquest Engineering Group Company ("Conquest") for Construction of Service Area 3 Collection System Project (the "Project") in May of 2009 (the "Contract"); and

**WHEREAS**, after the City issued Conquest a Notice to Proceed, Conquest failed to complete the Project as required by the Contract; and

**WHEREAS**, the City obtained quotes for the cost to complete the Project from no less than 5 wastewater contractors using current schedule of values for similar on-going work in the City; and

**WHEREAS**, staff recommends assigning the Contract for the completion of the remainder of the Project to Fountain Engineering, Inc., which provided the lowest quote of \$3,178,745.48.

**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 Assignment of Contract by and between the City of Marathon and Fountain Engineering, Inc. attached hereto as "Exhibit A," is hereby approved. The City Manager is authorized to execute the Assignment of Contract on behalf of the City, and to expend budgeted funds.

**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 14<sup>th</sup> DAY OF DECEMBER, 2010.

THE CITY OF MARATHON, FLORIDA

  
\_\_\_\_\_  
Ginger Snead, Mayor

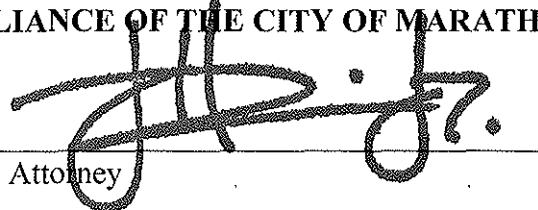
AYES: Cinque, Keating, Ramsay, Worthington, Snead  
NOES: None  
ABSENT: None  
ABSTAIN: None

ATTEST:

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

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

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

## ASSIGNMENT AND ASSUMPTION OF CONTRACT

THIS ASSIGNMENT is made and entered into this 24 day of FEBRUARY, by and between THE CITY OF MARATHON (variously, the "City" or the "Assignor"), FOUNTAIN, a Florida corporation (variously, "Fountain" or the "Assignee"), and THE HANOVER INSURANCE COMPANY.

### RECITALS

WHEREAS, the City and Conquest Engineering Group Company ("Conquest") contracted for the construction of the City of Marathon Service Area 3 Waste Water and Storm Water Project (the "Contract"); and

WHEREAS, the scope of the Contract was reduced by deductive change orders which required Conquest to construct only that portion of the original Service Area 3 Waste Water and Storm Project work confined to streets south of Highway U.S.1 (not including Highway U.S. 1) from 11th Street to 30th Street, inclusive (the "Contract As Amended" or the "Service Area 3-0 Work"); and

WHEREAS, Conquest failed to perform the Contract As Amended according to its plans specifications and the Contract As Amended was subsequently terminated; and

WHEREAS, on the date hereof, Assignor assigns and conveys to Assignee the Contract As Amended attached hereto as Exhibit "A"; and

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to accept from Assignor, all of Assignor's rights and obligations under the Contract As Amended; and

WHEREAS, The Hanover Insurance Company consents to this Assignment and agrees to bond the work undertaken pursuant to this Assignment, in accordance with the terms of the Payment and Performance Bonds attached hereto as Exhibit "B."

## AGREEMENT

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby transfer, assign, set over to Assignee, all of Assignor's rights, title and interest in and to the Contract As Amended, attached hereto as Exhibit "A," and by this reference made a part hereof.

1. Assignee hereby accepts said assignments, and assumes and agrees to be bound by all obligations and liabilities of Assignor arising under or with respect to the Contract As Amended, only from and after the date hereof.

2. The City and Assignee agree that the balance to be paid on the Contract is \$3,178,745.48 ("Stipulated Balance"). Assignee agrees to make payments to its sub-contractors in accordance with the terms and conditions of the Contract As Amended.

3. Assignee shall begin the work required hereunder no later than January 3, 2011 (the "Commencement Date"). The work required hereunder shall be substantially completed within two hundred forty (210) calendar days of the Commencement Date, and completed and ready for final payment in accordance with the Contract Documents within two hundred seventy (270) calendar days of the Commencement Date. Assignee shall work full time, in a workman like manner and in accordance with the requirements of the Contract, from the Commencement Date and is hereby granted a non compensatory time extension from the original completion date in the Contract. As consideration for the non compensatory time extension, the Assignee hereby waives any right to any claim for any additional time extensions and/or damages as a result of any delays which may have been caused by the Owner or other contractors up to and including the date of this Assignment.

4. In order to induce the City to make this Assignment, Assignee ratifies and renews the Contractors Representations contained in Article 7 of the Contract As Amended.

5. The Hanover Insurance Company consents to this Assignment and agrees to be bound to the City in accordance with the terms of the Payment and Performance Bonds attached hereto as Exhibit "B" including all work to be performed by Fountain called for by the Contract As Amended. The Hanover Insurance Company agrees to issue new Payment or Performance Bonds to reflect the value of this Assignment, and all work to be performed by Fountain called for by the Assignment.

6. Assignee acknowledges that funding for the work is provided in part by American Recovery and Reinvestment Act ("ARRA") grants and/or loans, and that notwithstanding any other provision contained herein, Assignee and its subcontractors agree to comply with provisions of the ARRA to the extent they are applicable.

7. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and shall be governed by and construed in accordance with the laws of the State of Florida.

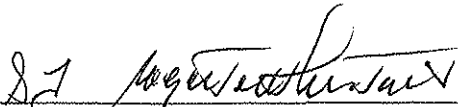
8. This Assignment may be executed in any number of counterparts, any one or combination of which shall constitute an original and facsimile copies of this Assignment and signatures shall be binding as originals.

9. This Assignment shall become effective upon the City's adoption of a resolution approving this Assignment, which shall occur no later than within five (5) business days after the last of the three (3) signing parties to the Assignment transmits its signature page to counsel of record for the opposing parties.

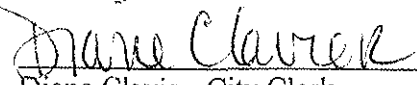
IN WITNESS WHEREOF, Assignor and Assignee have caused this instrument to be executed as of the day and year first above written.

(Executions and Acknowledgments Appear on Following Pages)

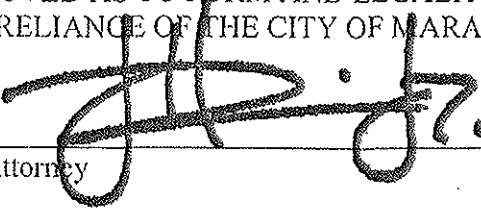
ASSIGNOR:

  
\_\_\_\_\_  
Roger Hernstadt, City Manager

ATTEST:

  
\_\_\_\_\_  
Diane Clavier, City Clerk

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

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

WITNESSES:  
Calvin Lonsery  
Print: Calvin Lonsery  
Chris Brown  
Print: Chris Brown

ASSIGNEE:  
By: Amy F  
Print: Amy Fountain  
Title: PRESIDENT

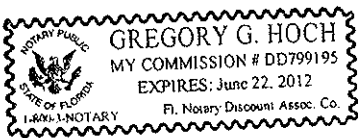
ACKNOWLEDGMENT

STATE OF Florida )  
COUNTY OF Monroe )

The foregoing instrument was sworn to, subscribed, and acknowledged before me this 24 day of February, 2011, by Amy Fountain, as President of Fountain Springs a \_\_\_\_\_, on behalf of the \_\_\_\_\_, ~~he~~/she is personally known to me or presented a \_\_\_\_\_ driver's license as identification and did not take an oath.

Notary Stamp/Seal:

Notary Signature: Gregory Hoch  
Notary Print: Gregory Hoch  
Notary Public, State of \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



WITNESSES:

SURETY:

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

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was sworn to, subscribed, and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_. He/she is personally known to me or presented a \_\_\_\_\_ driver's license as identification and did not take an oath.

Notary Stamp/Seal:

Notary Signature: \_\_\_\_\_

Notary Print: \_\_\_\_\_

Notary Public, State of \_\_\_\_\_

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_