

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2010-78**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A CONTRACT WITH WHARTON-SMITH, INC., FOR THE CONSTRUCTION OF THE SERVICE AREA 5 WASTEWATER TREATMENT PLANT EXPANSION IN AN AMOUNT NOT TO EXCEED \$4,227,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY AND EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon, Florida (“City”) published an Invitation to Bid for the construction of the Service Area 5 wastewater treatment plant expansion project (“Project”), with bid opening on July 8<sup>th</sup>, 2010; and

**WHEREAS**, Wharton-Smith, Inc. (“Contractor”) submitted the lowest responsive and responsible bid in the amount of \$6,722,000.00; and

**WHEREAS**, the City, by exercising its option to purchase major equipment directly, will realize a savings of \$2,495,000.00, resulting in the adjusted contract amount of \$4,227,000.00; and

**WHEREAS**, the City desires to accept the adjusted bid of, and enter into a contract with, Contractor for the construction of the Project.

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

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

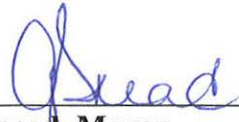
**Section 2.** The City Council hereby accepts the adjusted bid submitted by the Contractor for the Project.

**Section 3.** The contract between the City and Contractor for the construction of the Project in an amount not to exceed 4,227,000.00, a copy of which is attached hereto as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to execute the contract on behalf of the City and expend budgeted funds.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 27<sup>th</sup> DAY OF JULY, 2010.

THE CITY OF MARATHON, FLORIDA

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

AYES:           Cinque, Ramsay, Worthington, Keating, 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

**SECTION 00500  
CONSTRUCTION CONTRACT**

**THIS CONTRACT** (the "Contract") is dated as of the 27 day of July **2010** by and between **THE CITY OF MARATHON** (hereinafter called the "**CITY**") and Wharton-Smith, Inc. hereinafter called **CONTRACTOR**) located at: 750 Monroe Road, Sanford, FL 32747.

**CITY** and **CONTRACTOR**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK**

**1.1 Project/Work.** **CONTRACTOR** shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as the following: the **CITY OF MARATHON SERVICE AREA 5 (Little Venice) WASTEWATER TREATMENT PLANT EXPANSION**. The project consists of constructing new tanks, buildings, modifying existing tanks and installing wastewater treatment and pumping facilities, complete, in place, all in accordance with the construction drawings and technical specifications.

**Article 2. CITY'S REPRESENTATIVE, ARCHITECT AND ENGINEER**

**2.1.** It is understood that the City will designate a representative for the Work. The **CITY'S REPRESENTATIVE** referred to in any of the Contract Documents designated herein is Susie Thomas at City Hall, 9805 Overseas Highway, Marathon Florida 33050.

**2.2** The City's **ARCHITECT** referred to in any of the Contract Documents designated herein is N/A.

**2.3** The City's **ENGINEER** referred to in any of the Contract Documents designated herein is Edward R. Castle, P.E. of The Weiler Engineering Corporation, 6805 Overseas Highway, Marathon, Florida 33050.

**Article 3. TERM**

**3.1 Contract Times.** The Contract #1 work shall be substantially completed within Three Hundred Thirty (330) calendar days after the date specified in the Notice to Proceed ("Substantial Completion"), and completed and ready for final payment in accordance with the Contract Documents within Three Hundred Sixty (360) calendar days after the date specified in the Notice to Proceed ("Final Completion").

**3.2. Term.** The term of the Contract shall be from the date of execution through the date of final payment unless terminated earlier pursuant to Document 00700, Article 14, Payments to Contractor and Completion of the General Conditions.

**3.3 Survival of Obligations.** Any obligations by the Contractor, including but not limited to Document 00700, Article 12, Contractor's General Warranty and Guarantee, that would or could occur after the date of expiration or termination of the Contract shall survive the termination or expiration of the Contract.

**3.4. Liquidated Damages.** CITY and CONTRACTOR recognize that time is of the essence in this Contract and that the CITY will suffer financial loss if the Work is not completed within the contract times specified in Section 3.1 for the Work above, plus any approved extensions thereof allowed in accordance with the General Conditions. The CONTRACTOR also recognizes the delays, expense and difficulties involved in proving the actual loss suffered by CITY if the Work is not completed on time. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay CITY One Thousand Five Hundred Dollars (\$1,500.00) for each calendar day that expires after the time specified in Section 3.1 for Substantial Completion of the Work. After Final Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in Section 3.1 for completion and readiness for final payment or any proper extension thereof granted by CITY, CONTRACTOR shall pay CITY Two Thousand Dollars (\$2,000.00) for each calendar day that expires after the time specified in Section 3.1 for completion and readiness for final payment.

**3.5.** Should the Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set in Section 3.1 above because of lack of performance by the CONTRACTOR, it is understood and agreed that aside from any other liquidated damages, all actual additional costs incurred by the CITY for professional services will be the responsibility of the CONTRACTOR.

**3.6.** Monies due to the CITY under Sections 3.4 and 3.5 shall be deducted from any monies due the CONTRACTOR, or if no money is due or the amount due is insufficient to cover the amount charged, the CONTRACTOR shall be liable for said amount.

#### **Article 4. CONTRACT PRICE**

**4.1** CITY shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Sections 4.1.1 and 4.1.2 below:

4.1.1 For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this Section 4.1.1.

4.1.2 Unit Price Work (Combined Bid Form)

TOTAL OF ALL UNIT PRICES

Four million two hundred twenty-seven thousands and no/100 DOLLARS  
(use words)

\$4,227,000 (dollars)  
(use numbers)

Estimated quantities are not guaranteed, and determination of actual quantities and classification are to be made by ENGINEER as provided in the Contract Documents.

**4.2.** The CONTRACTOR agrees that all specific cash allowances are included in the above Contract Price and have been computed in accordance with the Contract Documents.

#### **Article 5. PAYMENT PROCEDURES**

**5.1** **CONTRACTOR** shall submit Applications for Payment in accordance with the General Conditions, Article 14, Payments to Contractor and Completion. Applications for Payment will be processed by **CITY** as provided in the General Conditions.

**5.2** **Progress Payments, Retainage.** **CITY** shall make progress payments, deducting the amount from the Contract Price above, on the basis of **CONTRACTOR'S** Applications for Payment as recommended by the **CITY'S REPRESENTATIVE**, on or about the last day of each month during construction as provided herein. All such payments will be made in accordance with the schedule of values established in the General Conditions or, in the event there is no schedule of values, as provided in the General Conditions.

**5.3.** The **CONTRACTOR** agrees that ten percent (10%) of the amount due for Work as set forth in each Application for Payment shall be retained by City for each Progress Payment until Final Payment, as defined in the General Conditions, Article 14, Payments to Contractor and Completion.

**5.3.1.** Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated above, but, in each case, less the aggregate of payments previously made and less such amounts as **CITY'S REPRESENTATIVE** shall determine, or **CITY** may withhold, in accordance with the General Conditions.

**5.4.** The payment of any Application for Payment by **CITY**, including the Final Request, does not constitute approval or acceptance by **CITY** of any item of the Work in such Request for Payment, nor shall it be construed as a waiver of any of City's rights hereunder or at law or in equity.

**5.5.** The Final Application for Payment by **CONTRACTOR** shall not be made until the **CONTRACTOR** delivers to the City complete original releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors on a form approved by the **CITY**, and an affidavit that so far as the **CONTRACTOR** has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed. The **CONTRACTOR** may, if any Subcontractor, materialmen, supplier or vendor refuses to furnish the required Final Waiver of Lien, furnish a bond satisfactory to City to defend and indemnify City and any other property owner, person or entity City may be required to indemnify against any lien or claim.

**5.6. Final Payment.** Upon final completion and acceptance of the Work in accordance with the General Conditions, **CITY** shall pay the remainder of the Contract Price and any retainage as recommended by the **CITY'S REPRESENTATIVE**.

## **Article 6. INSURANCE/INDEMNIFICATION.**

**6.1. Insurance.** The **CONTRACTOR** shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the **CITY** against hazards or risks of loss as specified in the General Conditions of the Contract Documents.

**6.2. Indemnification.** The **CONTRACTOR** shall indemnify, defend and hold harmless the **CITY**, their officials, agents, employees, and volunteers as set forth in General Conditions of the Contract Documents.

**Article 7. CONTRACTOR'S REPRESENTATIONS.**

In order to induce **CITY** to enter into this Contract, **CONTRACTOR** makes the following representations:

**7.1. CONTRACTOR** has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Bidding Documents including "technical data."

**7.2. CONTRACTOR** has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

**7.3. CONTRACTOR** is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

**7.4. CONTRACTOR** 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. **CONTRACTOR** 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. **CONTRACTOR** 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 Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by **CONTRACTOR** and safety precautions and programs incident thereto. **CONTRACTOR** does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

**7.5. The CONTRACTOR** is aware of the general nature of Work to be performed by **CITY** and others at the site that relates to the Work as indicated in the Contract Documents.

**7.6. The CONTRACTOR** has correlated the information known to **CONTRACTOR**, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

**7.7. The CONTRACTOR** has given the **CITY'S REPRESENTATIVE** written notice of all conflicts, errors, ambiguities or discrepancies that **CONTRACTOR** has discovered in the Contract Documents and the written resolution thereof by the **CITY'S REPRESENTATIVE** is acceptable to **CONTRACTOR**, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.8. The **CONTRACTOR** warrants the following:

7.8.1. **Anti-Discrimination:** The **CONTRACTOR** agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Contract 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 and state laws regarding non-discrimination.

7.8.2. **Anti-Kickback:** The **CONTRACTOR** warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the **CITY, FDEP, 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 Contract without liability or, in its discretion, to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

7.8.3. **Licensing and Permits:** The **CONTRACTOR** warrants that it shall have, prior to commencement of work under this Contract and at all times during said work, all required licenses and permits whether federal, state, County or City.

7.8.4. **Public Entity Crime Statement:** The **CONTRACTOR** warrants that it has not been placed on the convicted vendor list following a conviction for public entity crime, as specified in Document 00100, Section 7.5, of the Instructions to Bidders.

## **Article 8. CONTRACT DOCUMENTS.**

8.1 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 **CONTRACT** as though physically attached as a part thereof:

8.1.1 Change Orders.

8.1.2 Field Orders.

8.1.3 Contract for Construction.

8.1.4 Exhibits to this Contract.

8.1.5 Supplementary Conditions.

8.1.6 General Conditions.

8.1.7 The Department of Environmental Protection permit and the South Florida Water Management District permit for the Project

- 8.1.8 Specifications bearing the title: Marathon Service Area 5 Wastewater Treatment Plant Expansion
- 8.1.9 Drawings consisting of a cover sheet and the following sheets numbered G1-G3, C1-C8, S100-S-116, M1-M2, M101-M107, RW1-RW3, P1-P2, E1-E5, PID01-PID06, PID100-PID105, PH1-PH4. (63 sheets) inclusive with each sheet bearing the following general title: Marathon Service Area 5 Wastewater Treatment Plant Expansion
- 8.1.10 Bid Documents, including but not limited to: Addendum, Invitation to Bid, Instructions to Bidders, Bid Form provided by CONTRACTOR, Notice of Award and Notice to Proceed.
- 8.1.11 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.
- 8.1.12 The documents listed above shall be incorporated into this Contract (except as expressly noted otherwise above).
- 8.1.13 There are no Contract Documents other than those listed above in this Article. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.
- 8.1.14 The Contract Documents shall remain the property of the CITY. The CONTRACTOR shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided; however, that in no event shall the CONTRACTOR use, or permit to be used, any or all of such Contract Documents on other Projects without the City's prior written authorization.
- 8.1.15 The General Conditions discuss the bond and surety requirements of the CITY. This Contract does  does not  require bonds. If the Contract does not require bonds, the references to bonds in the General Conditions do not apply to this Contract.

## **Article 9. MISCELLANEOUS.**

**9.1.** Terms used in this Contract which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions. Terms used in Article 1 of the Instructions to Bidders also apply to this Contract.

**9.2.** Except as otherwise provided in the Contract Documents with respect to subcontractors, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto 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 Contract Documents.



**9.3.** **CITY** and **CONTRACTOR** 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 Contract Documents.

**9.4.** Severability: Should any provision, paragraph, sentence, word, or phrase contained in this Contract be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, then shall be deemed severable, and in this Contract, shall remain unmodified and in full force and effect.

**9.5.** Remedies: If and when any default of this Contract 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 Contract shall limit the **CITY** from pursuing any legal or equitable remedies that may apply.

**9.6.** Access to Public Records: The **CONTRACTOR** shall comply with the applicable provisions of Chapter 119, Florida Statutes. The **CITY** shall have the right to immediately terminate this contract for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Contract for a period of five (5) years from the date of Final Payment or Termination of this Contract.

**9.7.** Inspection and Audit: During the term of this Contract and for five (5) years from the date of Termination, the **CONTRACTOR** shall allow **CITY** representatives access during reasonable business hours to **CONTRACTOR'S** records related to this Contract for the purposes of inspection or audit of such records. If upon an audit of such records, the **CITY** determines the **CONTRACTOR** was paid for services not performed, upon receipt of written demand by the **CITY**, the **CONTRACTOR** shall remit such payments to the **CITY**.

**9.8.** Counterparts: This contract 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.

**9.9.** Notices: Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

**FOR CONTRACTOR:**

Wharton-Smith, Inc.  
750 Monroe Road  
Sanford, FL 32771

**FOR CITY:**

**City of Marathon**  
9805 Overseas Highway  
Marathon, Florida 33050  
ATTN: Roger T. Hernstadt, 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

**9.10. Waiver Of Jury Trial And Venue:** The **CITY** and **CONTRACTOR** 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 Contract, arising out of, under, or in connection with the Work, 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 Contract shall be in the Middle Keys Division, Monroe County, Florida.

**9.11. Attorneys' Fees:** If either the **CITY** or **CONTRACTOR** is required to enforce the terms of the Contract 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.

**9.12. Amendments:** This Contract may only be amended by the prior written approval of the parties or by execution of a Change Order in the form attached hereto as Exhibit A.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: THE CITY OF MARATHON, FLORIDA, signing by and through its Mayor or Vice Mayor, authorized to execute same by Council action on the 27th day of \_\_\_\_\_ July \_\_\_\_\_, 2010\_\_\_\_, and by \_\_\_\_\_ Wharton-Smith, Inc. \_\_\_\_\_

(Contractor), signing by and through its **President**, duly authorized to execute same.

CITY

ATTEST

Diane Clavier

City Clerk

1 day of September, 2010.

CITY OF MARATHON, FLORIDA

Roger T. Hernstadt

Roger T. Hernstadt, City Manager

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

By:   
City Attorney

**CONTRACTOR**

WITNESS

By: Ronald F. Davoli

By:   
(Signature and Title)

(Corporate Seal)


(Type Name/Title signed above)

23 day of August, 2010.

*(\* In the event that the Contractor 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, Ronald F. Davoli, certify that I am of the President of Wharton-Smith, Inc., and that I, Ronald F. Davoli, who signed the Bid with the City of Marathon, Monroe County, Florida for SA#5 WWTP Exp, is President of said Corporation with full authority to sign said Bid on behalf of the Corporation.

Signed and sealed this 23 day of August, 2010.

(SEAL)   
Signature

Ronald F. Davoli  
Typed w/Title

STATE OF FLORIDA  
COUNTY OF MONROE

SWORN TO AND SUBSCRIBED before me this 23 day of August, 2010.

My Commission Expires:

  
Notary Public



CERTIFICATE AS TO AUTHORIZED CORPORATE PERSONNEL

I, Ronald F. Davoli, certify that I am the President of Wharton-Smith, Inc., who signed the Bid with the City of Marathon, Monroe County, Florida, for the project titled SA#5 WTP Expansion, and that the following persons have the authority to sign payment requests on behalf of the Corporation:

John French, V.P.  
(Signature) (Typed Name w/Title)

\_\_\_\_\_  
(Signature) (Typed Name w/Title)

\_\_\_\_\_  
(Signature) (Typed Name w/Title)

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(SEAL) [Handwritten Signature]  
Signature

Ronald F. Davoli, President  
Typed w/Title

STATE OF FLORIDA  
COUNTY OF MONROE

SWORN TO AND SUBSCRIBED before me this 23 day of August, 2010.

My Commission Expires:

Judy J. Peterson  
Notary Public

