

CITY OF MARATHON, FLORIDA
RESOLUTION 2012-126

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING WORK AUTHORIZATION NO. 82 BETWEEN THE CITY AND WEILER ENGINEERING CORPORATION IN AN AMOUNT NOT TO EXCEED \$19,340.00 FOR CONSTRUCTION ENGINEERING INSPECTION SERVICES DUE TO DEBRIS ENCOUNTERED AT THE KEYS RV SITE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE WORK AUTHORIZATION AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon ("City") has a Continuing Services Agreement with Weiler Engineering Corporation ("Weiler"); and

WHEREAS, the City desires to issue a Work Authorization to Weiler in an amount not to exceed \$19,340.00 for construction engineering and administration services due to debris encountered at the Keys RV site.

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

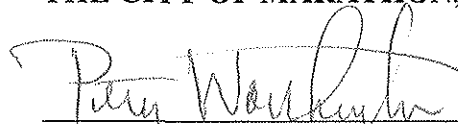
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. Work Authorization No.82 between the City and Weiler for the construction engineering services at the Keys RV site, 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 Work Authorization and expend budgeted funds on behalf of the City.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 23rd DAY OF OCTOBER, 2012.

THE CITY OF MARATHON, FLORIDA



Pete Worthington, Mayor

AYES: Cinque, Keating, Ramsay, Snead, Worthington
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

EXHIBIT "A"

PROJECT AGREEMENT

Between

CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

for

Work Authorization No. 82

Key RV CEI for Excavation and Removal of Rubbish

PROJECT AGREEMENT

Between

THE CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

For

Work Authorization No. 82

Key RV CEI for Excavation and Removal of Rubbish

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

The CITY and CONSULTANT agree as follows:

SECTION 1. SCOPE OF SERVICES

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

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

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

SECTION 2. DELIVERABLES

The Contractor installing the gravity collection system at Key RV encountered debris buried at the site, including metal, plastics, wood and other miscellaneous trash. The bad material was not anticipated and must be removed and clean fill brought in, increasing the time and material expenditure for the project. Under this work authorization, WEC will provide the following additional services:

- Provide inspection and documentation of the excavation and removal of the debris
- Quantify and document the amount of contaminated material removed
- Ensure that only contaminated materials are removed under the increased scope, and that all material that does not contain high levels of debris is removed at no additional cost to the City or Key RV
- Quantify and document the amount of clean fill needed to replace the removed contaminated material
- Ensure that only the clean fill needed to replace the contaminated material is included in the time & material billings for the changed scope of work
- Monitor and record the manpower and equipment used for removal of contaminated material and replacement with clean fill
- Ensure that only T&M for the removal and replacement of contaminated material is presented for billing
- Process change orders and pay applications associated with removal and replacement of the contaminated material

SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

3.1 **Term.** This Project Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect one year, unless otherwise terminated pursuant to Section 4 or other applicable provisions of this Project Agreement. The City Manager, in his sole discretion, may extend the term of this Agreement through written notification to the CONSULTANT. Such extension shall not exceed 180 days. No further extensions of this Agreement shall be effective unless authorized by the CITY Council.

3.2 **Commencement.** The CONSULTANT'S services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the CONSULTANT from the CITY. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. CONSULTANT must receive written notice from the City Manager prior to the beginning the performance of services.

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the CONSULTANT shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this

Agreement as Exhibit "3". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

3.4 **Liquidated Damages.** Unless otherwise excused by the CITY in writing, in the event that the CONSULTANT fails to meet to the contract time for completion of services as determined by the Project Schedule, the CONSULTANT shall pay to the CITY the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$ N/A per day. The CONSULTANT may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the CONSULTANT shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this Agreement. When the CITY reasonably believes that completion will be inexcusably delayed, the CITY shall be entitled, but not required, to withhold from any amounts otherwise due the CONSULTANT an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. If and when the CONSULTANT overcomes the delay in achieving completion, or any part thereof, for which the CITY has withheld payment, the CITY shall promptly release to the CONSULTANT those funds withheld, but no longer applicable, as liquidated damages.

3.5 All limitations of time set forth in this Agreement are of the essence.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Lump Sum Compensation.** ~~CITY agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit "2" \$_____.~~ **[OR, IF HOURLY, "CITY AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED \$ \$19,340.00]**

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, facsimile, courier services, mileage (at a rate approved by the CITY), photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the CITY.

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 Invoices

5.1.1 **Hourly Not To Exceed Rate.** CONSULTANT shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the personnel performing the work, the time worked and the total billing in

accordance with the Payment Schedule set forth in Exhibit "3", to this Project Agreement. Invoices will show the total amount billed against this work authorization and shall not exceed the not-to-exceed amount without authorization from the City. The CITY shall pay CONSULTANT within thirty (30) calendar days of approval by the City Manager of any invoices submitted by CONSULTANT to the CITY.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the CITY for payment to the CONSULTANT is disputed, or additional backup documentation is required, the CITY shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the CITY with additional backup documentation within five (5) working days of the date of the CITY'S notice. The CITY may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The CITY, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the CITY becomes credibly informed that any representations of the CONSULTANT, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the CITY'S reasonable satisfaction.

5.4 **Retainage.** The CITY reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONSULTANT for the design until the design is completed. Said retainage may be withheld at the sole discretion of the City Manager and as security for the successful completion of the CONSULTANT'S duties and responsibilities under the Project Agreement.

5.5 **Final Payment.** Submission of the CONSULTANT'S invoice for final payment and reimbursement shall constitute the CONSULTANT'S representation to the CITY that, upon receipt from the CITY of the amount invoiced, all obligations of the CONSULTANT to others, including its consultants, incurred in connection with the Project, shall be paid in full. The CONSULTANT shall deliver to the CITY all documents requested by the CITY evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the CITY by the CONSULTANT.

SECTION 6. TERMINATION/SUSPENSION

6.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the

termination. In the event that CONSULTANT abandons this Project Agreement or causes it to be terminated by the CITY, the CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. In the event that the CONSULTANT is terminated by the CITY for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

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

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

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

SECION 7. INCORPORATION OF TERMS AND CONDITONS OF CONTINUING SERVICE AGREEMENT

7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated June 23, 2004 between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

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ATTEST:

CITY OF MARATHON

France Claire e
City Clerk

By: [Signature]
Roger Hernstadt, City Manager

Date: 10/23/12

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

[Signature]
City Attorney

ATTEST:

WEILER ENGINEERING CORPORATION

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

Date: 10/15/12

Exhibit "1"

Project Description

The Contractor installing the gravity collection system at Key RV encountered debris buried at the site, including metal, plastics, wood and other miscellaneous trash. The debris consists of scrap metal, automotive junk, piping, lumber, plastics, trees, tanks and various other materials incorporated in the fill at an unknown time in the past. These materials must be removed. Removal of the large debris causes over-excavation of the trenches. Clean fill must be brought in to replace the removed volume of unsuitable material.

The unsuitable material was not anticipated and must be removed and clean fill brought in, increasing the time and material expenditure for the project. The contractor will be compensated for the additional effort and materials expenses through monthly change orders until the unsuitable material is no longer encountered.

Under this work authorization, WEC will provide the following additional services:

- Provide inspection and documentation of the excavation and removal of the debris
- Quantify and document the amount of contaminated material removed
- Ensure that only contaminated materials are removed under the increased scope, and that all material that does not contain high levels of debris is removed at no additional cost to the City or Key RV
- Quantify and document the amount of clean fill needed to replace the removed contaminated material
- Ensure that only the clean fill needed to replace the contaminated material is included in the time & material billings for the changed scope of work
- Monitor and record the manpower and equipment used for removal of contaminated material and replacement with clean fill
- Ensure that only T&M for the removal and replacement of contaminated material is presented for billing
- Process change orders and pay applications associated with removal and replacement of the contaminated material

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Exhibit "2"

Scope of Services and Project Schedule

Description

See Exhibit 1

Project Schedule

CONSULTANT will begin work upon execution of this Work Authorization. The proposed schedule anticipates up to 40 working days of additional time for the Contractor. This time is based on a conservative estimate of the extent of the unsuitable material. However, depending on the extent of the impacted area, the time is uncertain. If the maximum estimated time of 40 working days is exceeded, additional compensation to WEC may be needed to complete the work.

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EXHIBIT "3"

Payment Schedule

Additional CEI Services, Hourly Not-to-Exceed \$19,340.00

TOTAL NOT-TO-EXCEED AMOUNT \$19,340.00

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EXHIBIT "B"

PAGE 1 OF 2

CONSULTANT'S BILLING RATE

THE WEILER ENGINEERING CORPORATION

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

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EXHIBIT "B"

PAGE 2 OF 2

GENERAL DESCRIPTION OF EMPLOYEE CATEGORIES

R. Jeff Weiler, P.E., President - Mr. Weiler is a Professional Engineer registered in the State of Florida. He is the President and Owner of The Weiler Engineering Corporation.

Ed Castle, P.E., Vice President - Wastewater Department Manager – Mr. Castle is a Professional Engineer registered in the State of Florida. He will be the Engineer in Responsible Charge for this project.

Lori Farthing, Project Manager – Ms. Farthing will be the project manager for this project.

Dave Harlow - Mr. Harlow will provide inspection services for this project

Louis Germaine - Mr. Germaine will provide inspection services for this project

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