

**CITY OF MARATHON, FLORIDA
RESOLUTION 2018-22**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A PROJECT AGREEMENT FOR THE DESIGN AND CONSTRUCTION MANAGEMENT OF EMERGENCY REPAIRS AND UPGRADES AT WASTEWATER TREATMENT PLANT #5. TO WEILER ENGINEERING CORPORATION; APPROVING THE PROJECT AGREEMENT IN THE NOT TO EXCEED A TOTAL AMOUNT OF \$197,600.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) and Weiler Engineering Corporation. (the “Engineer”) have entered into a continuing services agreement for Professional Engineering Services in February of 2013; and

WHEREAS, work authorization No. 2016-03,” (the “Project Agreement”) contains the scope of work to provide professional engineering services required for the surveying, design, permitting and bidding of for Expansion of the Operating Filtration Systems at Wastewater Treatment Plants #3 and #4” (the “Project”). The Work Authorization also includes CEI services for construction inspections and closeout of the project. Dated February 23, 2016; and

WHEREAS, the City staff wish to enter into this agreement, which will enable the City to complete the emergency repairs at the Service Area 5 wastewater treatment facility; and

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

Section 1. The foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. The Project Agreement 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 sign the Project Agreement 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 13th DAY OF MARCH 2018.

THE CITY OF MARATHON, FLORIDA



Michelle Coldiron, Mayor

AYES: Bartus, Cook, Senmartin, Zieg, Coldiron
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:



David Migut, City Attorney

EXHIBIT "A"

PROJECT AGREEMENT

Between

CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

for

Work Authorization No. 2017-05B

Area 5 WWTP Emergency Repairs and Upgrades Project

PROJECT AGREEMENT

Between

THE CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

For

Work Authorization No. 2017-05B

Area 5 WWTP Emergency Repairs and Upgrades Project

Pursuant to the provisions contained in the "Continuing Services Agreement" between the CITY OF MARATHON, FLORIDA (the "CITY") and THE WEILER ENGINEERING CORPORATION, ("CONSULTANT") dated February 14, 2017, 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 Weiler Engineering Corporation (WEC) will assist the City with the Area 5 Emergency Repairs and Upgrades Project. The project consists four major divisions of work, or tasks. The work includes upgrades to the protective coatings systems and galvanic corrosion protections system and design of a new stand-alone headworks with associated equipment and piping.

WEC will provide design and construction phase engineering services for the improvements to ensure constructability and to ensure that the City's goals are achieved. WEC will assist the City in procuring the Contractor to perform the repairs and upgrades, will review shop drawings, will provide construction phase services including engineering inspections, responses to RFIs, processing of change orders and pay applications, produce record drawings and provide project close-out services.

Deliverables will include:

Design Phase

- Design drawings and technical specifications for coatings and galvanic protection for the two glass-lined steel pre-anoxic/pre-aeration tanks.
- Design drawings and technical specifications for coatings and galvanic protection of the three steel membrane bioreactor tanks.
- Design drawings and technical specifications for chemical resistant coatings for the interior of the concrete influent equalization tank.
- Design drawings and technical specifications for a steel headworks tower and platform, coarse static screen, dual fine screens, influent splitter box and RAS splitter box. Associated piping plans and grating and handrail plans and technical specifications will be provided

Construction Cost Negotiation Phase

- Site visit with selected piping Contractor;
- Negotiation of scope and cost of work with selected Contractor;
- Prepare Change Order to include Area 5 Emergency Repairs and Upgrades Project in current construction contract;

Construction Phase

- Review of Product Submittals and Shop Drawings;
- Construction Inspection;
- Attendance at Walkthroughs and Generation of Punch Lists;
- Attendance at system startups;
- Review of Record Drawings for upgrades.

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 two years, 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 **Compensation.** CITY agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit "2" \$_____ plus reimbursable expenses not to exceed \$_____. Total not to exceed amount for this Work Authorization is \$_____ [OR, IF HOURLY, "CITY AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED **\$197,600.00**

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 CONDCTIONS OF CONTINUING SERVICE AGREEMENT

7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated February 14, 2017 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.

PURSUANT TO F.S. 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR ANY NEGLIGENCE.

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ATTEST:

CITY OF MARATHON

Diane Clavier
City Clerk

By: Chuck Lindsey
City Manager

Date: 3-21-18

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

D. J. [Signature]
City Attorney

ATTEST:

WEILER ENGINEERING CORPORATION

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

Date: 3/20/18

Exhibit "1"

Project Description

The Weiler Engineering Corporation (WEC) will assist the City with the Area 5 Emergency Repairs and Upgrades Project. The project consists four major divisions of work, or tasks. The work includes repairs and upgrades to the protective coatings systems and galvanic corrosion protections system and design of a new stand-alone headworks with associated equipment and piping.

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Exhibit "2"

Scope of Services and Project Schedule

Description

See Exhibit 1

Anticipated Project Schedule

CONSULTANT will begin work upon execution of this Work Authorization.

<i>Task</i>	<i>Completion Time</i>
Provide Design Drawings and Technical Specifications	February 21, 2018
Negotiate with Reynolds, prepare Change Orders	March 3, 2018
Shop drawings & Schedules Review	March 3, 2018
Construction Phase Services	February 9, 2018
Project Closeout	March 9, 2018

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EXHIBIT "B"

PAGE 1 OF 2

CONSULTANT'S BILLING RATE

Company: The Weiler Engineering Corporation	
Job Position Title	Total Hourly Rate \$/Hour
Principal in Charge	\$190.00
Expert Witness	\$250.00
Registered Professional Engineer (P.E.)	\$145.00
Environmental Scientist	\$145.00
Mining Specialist PhD (non-P.E.)	\$145.00
Project Manager	\$145.00
Senior Planner	\$125.00
Registered Engineer Intern (E.I.)	\$115.00
Plans Examiner	\$115.00
Structural Inspector	\$115.00
Senior Construction Inspector	\$105.00
Senior Engineering Designer	\$100.00
Engineering Designer	\$90.00
Construction Inspector	\$90.00
Engineering Technician	\$80.00
Field Technician	\$80.00
Clerical	\$55.00

Reimbursable Expenses

Vellums	\$10.00 / each	(24 x 36)
Mylars	\$25.00 / each	(24 x 36)
Blue Prints	\$2.80 / each	(24 x 36)
Copies	\$0.30 / each	(11 x 17)
Copies	\$0.20 / each	(8½ x 14)
Copies	\$0.15 /each	(8½ x 11)
Travel*	Cost plus 15%	
Overnight mail	Cost plus 15%	
Other Reimbursable Expenses	Cost plus 15%	

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EXHIBIT "B"

PAGE 2 OF 2

GENERAL DESCRIPTION OF EMPLOYEE CATEGORIES

Principal in Charge – The Principal in Charge will be an owner and officer of the Company. This position may include R. Jeffery Weiler, PE, President of The Weiler Engineering Corporation and Edward R. Castle, PE, Vice President of The Weiler Engineering Corporation.

Registered Professional Engineer – Registered Professional Engineer will be a Professional Engineer licensed to provide Engineering Services in the State of Florida.

Project Manager – Project Manager will be a qualified senior staff member with appropriate skills and experience to oversee and manage Weiler Engineering staff. The Project Manager will have primary responsibility of the day to day functions of the project and will perform QA/QC reviews of the work product.

Registered Engineering Intern – Registered Engineering Intern will be a graduate of an accredited Engineering program and will be licensed in the State of Florida as an Engineering Intern.

Engineering Designer – Engineering Designer will be a senior staff member with education and experience sufficient to perform the work. Skills will include drafting in AutoCAD, proficiency in use of computerized word processing programs and spreadsheets, with a thorough understanding of engineering principals.

Senior Engineering Inspector – Senior Engineering Inspector will be a senior staff member with education and experience sufficient to perform the work. Skills will include ability to read and interpret plans and technical specifications, understanding of and experience with industrial and underground construction methods and materials, good organizational and record-keeping skills and a thorough understanding of general engineering principles.

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