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**CITY OF MARATHON, FLORIDA
RESOLUTION 2016-43**

APPROVAL OF A RESOLUTION APPROVING AND AMENDMENT TO THE GRANT AGREEMENT BETWEEN THE CITY AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION TO COMPLETE CULVERT IMPROVEMENTS ON 89TH STREET, OCEAN (RESOLUTION 2016-17); AUTHORIZING THE CITY MANAGER TO SIGN SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Florida Department of Environmental Protection has awarded the City a grant of \$50,000 to complete a canal restoration project within the City of Marathon; and

WHEREAS, canal restoration, along with wastewater and stormwater improvements, are among the top three areas of impact where water quality improvements can be made in the Keys; and

WHEREAS, it is the City's desire to amend the Grant Agreement, in order to realign the FDEP portion of the project funding to complete payment submittals to and reimbursements from FDEP by the end of June 2016,

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 and authorizes the City Manager to execute an amendment to the Grant Agreement between the City of Marathon and the Department of Environmental Protection (originally approved under Resolution 2016-17) attached hereto as Exhibit "A, including two separate items."

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 14th DAY OF JUNE, 2016

THE CITY OF MARATHON, FLORIDA



Mayor Mark Senmartin

AYES: Bartus, Coldiron, Kelly, Zieg, Senmaratin
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

(City Seal)

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


David Migut, City Attorney

EXHIBIT A

DEP AGREEMENT NO. S0926
AMENDMENT NO. 1

THIS AGREEMENT as entered into pursuant to Section 215.971, Florida Statutes, (F.S.) on the 11th day of March, 2016, between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as the "Department") and the CITY OF MARATHON (hereinafter referred to as the "Grantee") is hereby amended.

WHEREAS, the Grantee is requesting a modification to the scope of work, Attachment A, due to delay in permit processing; and,

WHEREAS, the Department has agreed to the modification; and,

WHEREAS, other changes to the Agreement are necessary.

NOW, THEREFORE, the parties hereto agree as follows:

1. Paragraph 3.B. is replaced with the following:
 - 3.B. Prior written approval from the Department's Grant Manager shall be required for changes to this Agreement.
 - i. A Change Order to this Agreement is required when task timelines within the current authorized Agreement period change, and/or when the cumulative transfer of funds between approved budget categories, as defined in Attachment A, are less than ten percent (10%) of the total budget as last approved by the Department. All Change Orders are subject to the mutual agreement of both parties as evidenced in writing.
 - ii. A formal Amendment to this Agreement is required for changes which cause any of the following: an increase or decrease in the Agreement funding amount; a change in the Grantee's match requirements; a change in the expiration date of the Agreement; and/or changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment A, exceeds or is expected to exceed ten percent (10%) of the total budget as last approved by the Department. All Amendments are subject to the mutual agreement of both parties as evidenced in writing.
2. Paragraph 3.D.i. is replaced with the following:
 - 3.D.i. Contractual (Subcontractors) – Reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from the Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the project. All multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If the Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, the Grantee shall be required to reimburse such funds to the Department within thirty (30) calendar days of written notification. Interest on the excessive charges shall be calculated based on the prevailing rate used by the State Board of Administration. Subcontracts, which involve equipment purchases as part of an installation/retrofit or that include infrastructure and/or infrastructure improvements, as defined in Florida Chief Financial Officer (CFO) Memorandum No. 5 (2011-2012), must be capitalized in accordance with Chapter 69I-72, Florida Administrative Code (F.A.C.), The Grantee shall be responsible

for maintaining appropriate property records, utilizing Attachment F, Property Reporting Form, as needed, for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.

For fixed-price (vendor) subcontracts, the following provisions shall apply:

- a. The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in **Attachment A**. Invoices submitted to the Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (i.e., Invitation to Bid or Request for Proposals) resulting in the fixed-price subcontract.
 - b. The Grantee may request approval from the Department to award a fixed-price subcontract resulting from procurement methods other than those identified in the paragraph above. In this instance, the Grantee shall request the advance written approval from the Department's Grant Manager of the fixed price negotiated by the Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of the Department Grant Manager's approval of the fixed-price amount, the Grantee may proceed in finalizing the fixed-price subcontract.
 - c. All subcontracts are subject to the provisions of paragraph 12 and any other appropriate provisions of this Agreement which affect subcontracting activities.
3. Paragraph 11 is replaced with the following:
11. A. In addition to the requirements of the preceding paragraph, the Grantee shall comply with the applicable provisions contained in **Attachment E, Special Audit Requirements**, attached hereto and made a part hereof. **Exhibit 1** to **Attachment E** summarizes the funding sources supporting the Agreement for purposes of assisting the Grantee in complying with the requirements of **Attachment E**. A revised copy of **Exhibit 1** must be provided to the Grantee for each amendment which authorizes a funding increase or decrease. If the Grantee fails to receive a revised copy of **Exhibit 1**, the Grantee shall notify the Department's Grants Development and Review Manager at (850) 245-2361 to request a copy of the updated information.
 - B. The Grantee is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. The Grantee shall consider the type of financial assistance (federal and/or state) identified in **Attachment E, Exhibit 1** when making its determination. For federal financial assistance, the Grantee shall utilize the guidance provided under 2 CFR §200.330 for determining whether the relationship represents that of a subrecipient or vendor. For state financial assistance, the Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website:

<https://apps.fldfs.com/fsaa>

- C. For federal financial assistance, if the Grantee is a For-Profit entity then it is exempt from the Federal Single Audit Act provisions contained in **Attachment E, Special Audit Requirements**, pursuant to 2 CFR §200.501(h). For state financial assistance, if the Grantee is one of the following entities: a district school board, charter school, Florida College System Institution (including a community college), public university, government outside of Florida, or a Federal agency, then it is exempt from the Florida Single Audit Act provisions contained in **Attachment E, Special Audit Requirements**, per Section 215.97, F.S., Florida Single Audit Act.

The Grantee should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.

- 4. Paragraph 17 is revised to include the following:

- 17. In the event the Department's or the Grantee's Grant Manager changes, written notice by electronic mail with acknowledgement by the other party will be acceptable. Any further Change Order or Amendment pursuant to paragraph 3.B should include the updated Grant Manager information.

- 5. Paragraph 18 is replaced with the following:

- 18. A. Providing and maintaining adequate insurance coverage is a material obligation of the Grantee. This insurance must provide coverage for all claims that may arise from the performance of the work specified under this Agreement, whether such work is performed by the Grantee, any sub-grantee, or Grantee's contractors. Such insurance shall include the State of Florida, the Department, and the State of Florida Board of Trustees of the Internal Improvement Trust Fund, as Additional Insureds for the entire length of the Agreement.

- B. Coverage may be by private insurance or self-insurance. The Grantee shall provide documentation of all required coverage to the Department's Grant Manager *prior to* performance of any work pursuant to this Agreement. All commercial insurance policies shall be with insurers licensed or eligible to do business in the State of Florida. The Grantee's current certificate of insurance shall contain a provision that the insurance will not be canceled for any reason except after thirty (30) calendar days' written notice (with the exception of non-payment of premium, which requires a 10-calendar-day notice) to the Department's Grant Manager. If the Grantee is self-funded for any category of insurance, then the Grantee shall provide documentation that warrants and represents that it is self-funded for said insurance, appropriate and allowable under Florida law, and that such self-insurance offers protection applicable to the Grantee's officers, employees, servants and agents while acting within the scope of their employment with the Grantee for the entire length of the Agreement.

- C. During the life of this Agreement, the Grantee shall secure and maintain insurance coverages as specified below. In addition, the Grantee shall include these requirements in any sub grant or subcontract issued for the performance of the work specified under this Agreement, unless such sub grant or subcontractor employees are covered by the protection afforded by the Grantee.

- i. Workers' Compensation Insurance is required for all employees connected with the work of this project. Any self-insurance program or insurance coverage shall

comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation statutes, the Grantee shall provide proof of adequate insurance satisfactory to the Department, for the protection of its employees not otherwise protected.

ii. Commercial General Liability insurance is required, including bodily injury and property damage. The minimum limits of liability shall be \$200,000 each individual's claim and \$300,000 each occurrence.

iii. Commercial Automobile Liability insurance is required, for all claims which may arise from the services and/or operations under this Agreement, whether such services and/or operations are by the Grantee or any of its contractors. The minimum limits of liability shall be as follows:

\$300,000 Automobile Liability Combined Single Limit for
Company-Owned Vehicles, if applicable

\$300,000 Hired and Non-owned Automobile Liability
Coverage

iv. Other Insurance may be required if any work proceeds over or adjacent to water, including but not limited to Jones Act, Longshoreman's and Harbormaster's, or the inclusion of any applicable rider to worker's compensation insurance, and any necessary watercraft insurance, with limits of not less than \$300,000 each. Questions concerning required coverage should be directed to the U.S. Department of Labor (<http://www.dol.gov/owcp/dlhwc/lscntac.htm>) or to the parties' insurance carrier.

6. Paragraph 21 is deleted and replaced by "Reserved".

-- Attachment A, Grant Work Plan, is hereby deleted in its entirety and replaced with **Attachment A-1, Revised Grant Work Plan**, attached hereto and made a part of the Agreement. All references in the Agreement to Attachment A shall hereinafter refer to **Attachment A-1, Revised Grant Work Plan**.

In all other respects, the Agreement of which this is an Amendment, and attachments relative thereto, shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed the day and year last written below.

CITY OF MARATHON

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: George Garrett
Signature of Person Authorized to Sign

By: [Signature]
Secretary or Designee

George Garrett
Print Name and Title of Authorized Person

JON M. GLEHART
Print Name and Title of Authorized Person

Date: 6/17/2016

Date: 6/21/16

[Signature]
Randal Landers, DEP Grant Manager

[Signature]
DEP Grants Administrator

Approved as to form and legality:

[Signature] 6/15/2016
DEP Attorney

For Agreements with governmental boards/commissions: If someone other than the Chairman signs this Amendment, a resolution, statement or other document authorizing that person to sign the Amendment on behalf of the Grantee must accompany the Amendment.

List of attachments/exhibits included as part of this Amendment:

Specify Type	Letter/Number	Description (include number of pages)
Attachment	A-1	Revised Grant Work Plan (8 Pages)

**ATTACHMENT A-1
REVISED GRANT WORK PLAN**

PROJECT TITLE: Canal Circulation Improvement Project

PROJECT LOCATION: City of Marathon, 89th Street, (Ocean) Canals, East (221) & Canal, West (222)

PROJECT BACKGROUND:

Within the Florida Keys as carried out under the authority of their local governments, wastewater and stormwater improvements are in various stages of completion. Broadly, these improvements are expected to be complete by 2020 throughout the Florida Keys.

Poor canal water quality is the critical and elusive component of remaining water quality impairment in the Florida Keys. The Florida Keys Reasonable Assurance Document (CDM & URS, 2008) identifies degraded canal waters as the primary factor leading to these impairments.

This project will take this a step towards improving water quality in one (1) residential canal (89th Street (Ocean) Canal, East & West) located within the corporate limits of the City of Marathon. Enhancing canal tidal circulation in canals is seen as critical among a number of potential options in the arsenal of solutions for improving canal water quality.

This project will install a circulation culvert at the confluence of 89th Street (Ocean) Canal, East and West. Thus improved with a culvert, the City of Marathon believes that circulation in the canal will be improved, ultimately enhancing the water quality in the canals and surrounding waters.

Critical issues relevant to the completion of circulation improvements like this, is the fact that this culvert and future cases will likely cross roads with recently installed wastewater and stormwater infrastructure.

PROJECT DESCRIPTION:

The Florida Keys are an arcuate chain of emergent islands representing the geologic character of the Florida barrier reef tract today. These islands stretch from Dade County at Elliot Key to the Dry Tortugas some 220 miles to the south and west.

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Figure 1. Florida Keys Reef Tract. Reproduced with appreciation from the NOAA, FKNMS Website.

Water Quality protection and enhancement of marine waters are at the core of strategies for management of the Florida Keys within the boundaries of the Florida Keys National Marine Sanctuary.

At a local level and within the waters immediately surrounding the Florida Keys, the key elements for enhancing water quality have been the improvement of practices for processing wastewater and managing stormwater. To that end the unincorporated County and its municipalities have each developed master plans for the construction of major wastewater and stormwater management systems and utilities. Projects proposed under these plans are in various stages of completion throughout the Florida Keys, but are expected to be complete by 2020.

Critical direction for these actions has been taken from the designation of the Keys as an Area of Critical State Concern, the designation of the majority of waters in the Florida Keys as Outstanding Florida Waters, the designation of the Florida Keys National Marine Sanctuary (FKNMS), the development and completion of the Florida Keys National Marine Sanctuary Management Plan, including critically the Water Quality Protection Program, and finally the development and completion of local government Comprehensive Land Use Plans.

Within the City of Marathon, wastewater and stormwater projects were completed by the middle of 2012.

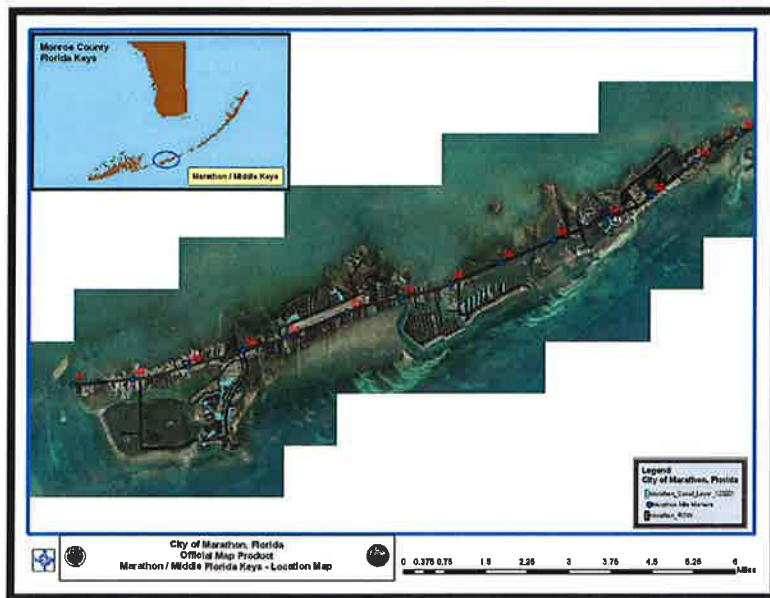


Figure 2. City of Marathon, Middle Florida Keys.

Also seen as critical to the desired enhancement of marine water quality are the negative impacts that dredged canals have on the nearshore waters of the Florida Keys. The Florida Keys National Marine Sanctuary Management Plan and the County and municipal Comprehensive Land Use Plans have identified the need to improve the quality of the waters within canals as additional crucial steps for the enhancement of marine water quality. To that end, in 2003 Monroe County developed and completed a Residential Canal Inventory and Assessment (MCRCAI) whose purpose was to inventory residential canals, to define how those canals have come to impose significant impacts on the marine waters surrounding the Florida Keys, and finally to offer a range of case dependent options that may be used to enhance circulation and water quality in the canals of the Florida Keys. (See below, Figure 3. Canal Layer Map – Coco Plum Beach Road).

Beginning in mid-2012, the County began development of a second and more detailed phase of the MCRCAI, now known as the Canal Management Master Plan.

In March, 2012, the Canal Subcommittee of the FKNMS Water Quality Steering Committee initiated work on Phase 1 of the CMMP, using Water Quality Protection Program (WQPP) funds provided by the Florida Department of Environmental Protection (FDEP). Because these funds were available for only a short time (from March through June, 2012), the timeline of Phase 1 was compressed and its scope was limited to two objectives:

- 1) develop a basic conceptual framework for canal restoration and management that is comparable to the frameworks used in the County's existing wastewater and stormwater master plans; and
- 2) identify a short-list of high-priority canal restoration projects which can be implemented by the County and other WQPP participants over the next several years. The work involved the following tasks:
 - Task 1: Collate available information and summarize CMMP objectives;
 - Task 2: Identify priority management issues;
 - Task 3: Establish consensus-based goals for each priority issue;

- Task 4: Identify the highest-priority canals for potential implementation of restoration options;
- Task 5: Develop an initial short-list of restoration projects;
- Task 6: Establish an adaptive management process; and
- Task 7: Prepare the Phase 1 CMMP document.

This work is complete and implementation of prioritized projects within the County and Islamorada are currently under way or completed.

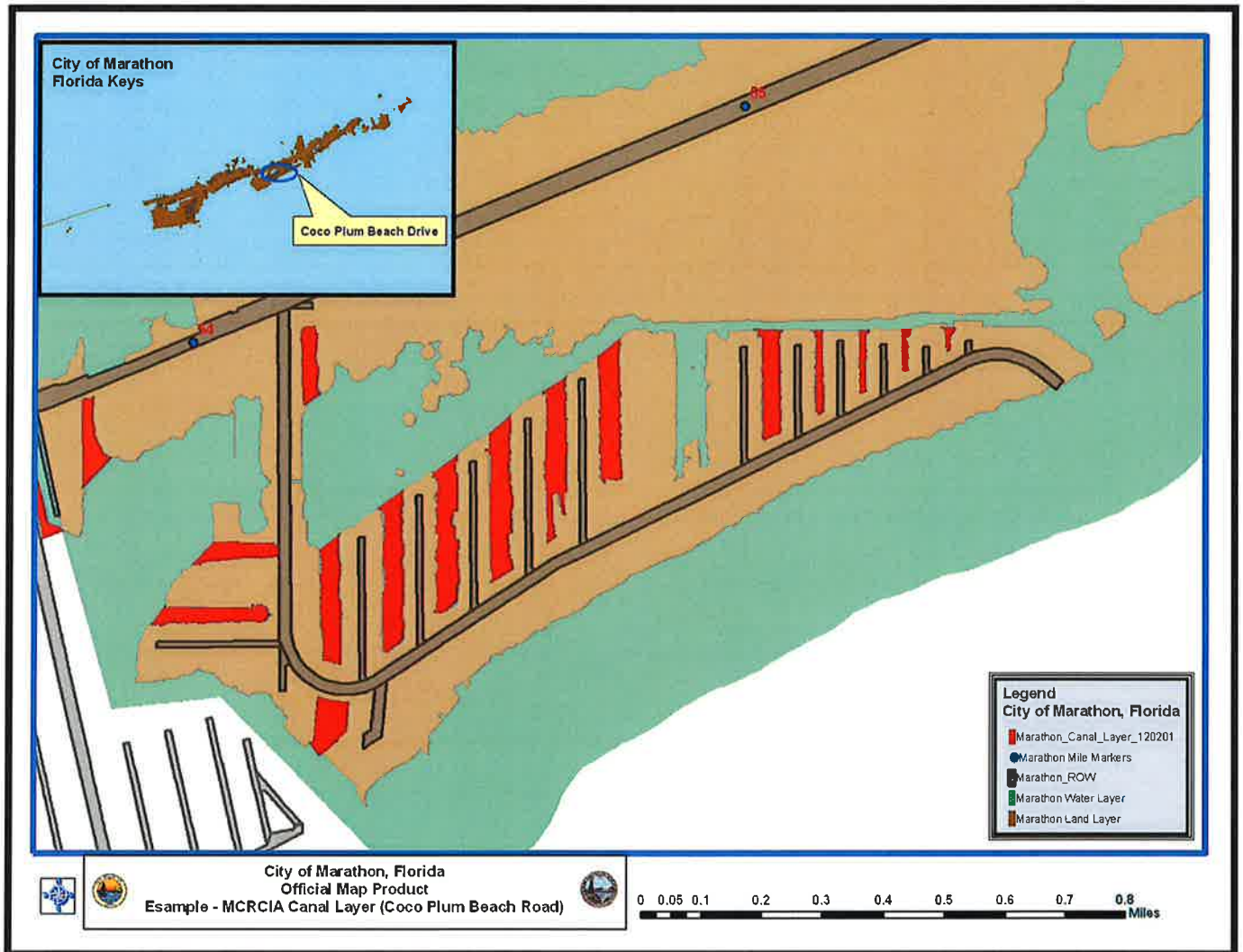


Figure 3. Canal Layer Map – Coco Plum Beach Road.

Within the City of Marathon, the Residential Canal Inventory and Assessment document identifies eighty-three (83) single (simple) to multiple-branching (complex) canal systems. Of these only seven (7) canals are identified as having culverts intended to enhance circulation within them. Two (2) of these culverts actually connect three (3) canals. The use for culverts, as noted in the MCRCAI is an effective tool for improving water quality, but may not make sense in many cases. For instance, single linear canals not in proximity to other canals do not allow an option for creating connections to other water bodies.

Within the City of Marathon, in addition to the seven (7) canal systems with culverts already, the City believes that an additional four (4) may be possible. This particular project includes the connection of two canals juxtaposed to a street in Marathon. The City will focus on completing the 89th Street project with grant funding.

89th Street (Ocean)



Figure 4. 89th Street (Ocean) Street and Areal Views.

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Figure 5. 89th Street (Ocean) Culvert Installation Location.

TASKS AND DELIVERABLES

Task 1: Construction of Project

Task Description: The Grantee will complete the design of one (1) culvert at 89th Street, in the City of Marathon, Florida, and obtain all necessary permits for construction of the project. The Grantee will select a qualified and licensed contractor, selected through the Grantee's procurement process. The Grantee shall prepare and solicit bids utilizing a bid package in accordance with state and federal laws and this Agreement. Included in this task are pre-bid meeting(s) in response to bid questions. The contracted entity is providing engineering oversight. This project will complete the construction of the culvert.

Deliverable 1a: Provide design, construction and bid documents, including all necessary permits for the construction of a 60 inch culvert bridging canals on either side of 89th Street, Ocean, Marathon, Florida:

Construction documents:

- 1) An electronic copy of the final design, including professional certification as applicable, including:
 - a. Limited Bathometric topography survey
 - b. Culvert Design and Calculations
 - c. Plan and Profiles 200 LF North and South of each crossing
 - d. Preliminary and Final Design Plans
 - e. Permit packages for State, Federal and Local permit applications after final design plans
 - f. Probable Construction Cost Opinion
 - g. Miscellaneous coordination with City of Marathon
 - h. Copy of all required permits identifying issue dates and issuing authorities submitted to the Department's Grant Manager.

Bid Documents:

- 1) An electronic copy of public notice of advertisement for the bid; and,
 - a. Electronic copy of bid package; and,
 - b. Written notice of selected contractor; and,
 - c. Electronic access to all inquiries, questions, and comments regarding the bid documents; and,
 - d. Electronic copy of executed subcontract(s) provided prior to submitting any invoices for the subcontracted work; and,

Performance Standard: The Department's Grant Manager will review the deliverables, and will consult with the appropriate staff of DEP and the Department's Bureau of Survey and Mapping to verify the deliverables are in conformance with the criteria found in 5J-17, F.A.C., pursuant to Chapter 472, F.S., to verify that they meet the specifications in the Grant Work Plan and this task description and that work is being performed in accordance with the Grantee's construction contract documents and specifications. Upon review and written acceptance of each deliverable submittal by the Department's Grant Manager, the Grantee may proceed with payment request submittal for costs associated under this task.

Deliverable 1b: The City will provide the following documentation verifying project completion:

- 1) Dated color photographs of the construction site(s) prior to, during, and immediately following completion of the construction task; and,
- 2) Written verification that the Grantee has received As-built and any required final inspection report(s) for the project; and,

- 3) Signed acceptance of the completed work by the Grantee; and
- 4) Signed statement from a Florida Licensed Professional Engineer indicating construction has been completed in accordance with the design.

Performance Standard: The Department's Grant Manager will review the final deliverables to verify that they meet the specifications in the Grant Work Plan and this task description and that work is being performed in accordance with the Grantee's construction contract documents and specifications. Upon review and written approval by the Department's Grant Manager of all final deliverables under this task, the Department shall deem this project completed. Any costs for any deliverable that is not completed as outlined in the Department-approved Deliverable 1a or in Deliverable 1b may be discounted from the Deliverable 1a payment request.

PROJECT TIMELINE: The tasks must be completed by the end of each task timeline and all deliverables must be received by the designated due date.

BUDGET: Grantee will not be reimbursed for travel by employees of the City of Marathon; however, the City of Marathon has contracts with approved vendors and travel reimbursement for these vendors is permitted under this agreement where applicable. Travel support documentation provided by contractors of the Grantee must meet the requirements of the Department in order for reimbursement to occur.

Task/ Deliverable No.	Task or Deliverable Title	Task Start Date	Task End Date	Deliverable Due Date/ Frequency
1	Construction of Project	Execution Date	June 30, 2016	June 30, 2016 (w/ Monthly Progress Reports)

BUDGET DETAIL BY TASK:

Task No.	Budget Category	Budget Amount
1	Contractual Services	\$50,000.00
	Total for Task:	\$50,000.00

PROJECT BUDGET SUMMARY: Cost reimbursable grant funding must not exceed the category totals for the project as indicated below.

Category Totals	Grant Funding, Not to Exceed, \$50,000.00
Contractual Services Total	\$50,000.00
Total:	\$50,000.00

Citation. Florida Keys Reasonable Assurance Document (CDM & URS, 2008)