

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2024-90**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING CHANGE ORDER #1 FOR THE GENERAL CONSULTING CONTRACT PSA-24-1 TO WEILER ENGINEERING CORPORATION.; APPROVING AN INCREASE IN THE PROJECT SPECIFIC AGREEMENT AMOUNT OF \$58,600.00; 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 “Contractor”) have entered into a Project Specific Agreement for the Utilities General Consulting; and

**WHEREAS**, the City staff wish to enter into this Change Order #1, which will enable the City to continue to the consulting needed to compete specific ongoing projects; and

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

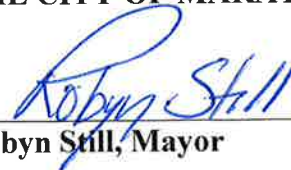
**Section 1.** The foregoing recitals are true and correct and are incorporated herein by this reference.

**Section 2.** Change Order #1 attached hereto as Exhibit “C”, 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 17<sup>th</sup> DAY OF SEPTEMBER 2024**

**THE CITY OF MARATHON, FLORIDA**



**Robyn Still, Mayor**

AYES: Gonzalez, Matlock, Smith, Landry, Still  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

*Hillary H. Palmer*

Hillary Palmer, Deputy City Clerk



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

*Steve Williams*

Steve Williams, City Attorney

**EXHIBIT "C"**  
**CHANGE ORDER**

**CHANGE ORDER NO.   1**

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**TO: City of Marathon**

**PROJECT: Work Authorization 24-1  
Sombbrero Boulevard Stormwater Improvements Design, Permitting & Bidding**

**CONTRACTOR: Weiler Engineering Corporation**

**DATE: August 28, 2024**

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This Change Order will authorize the following change to the Agreement:

Provided for payment for engineering work requested by the City that is outside the scope of work detailed in PSA 24-1, including assistance with presentations at public meeting to address flooding complaints, preparation of a SFWMD Action Plan to address flooding complaints and extra effort and expense associated with drawing easement areas and obtaining survey, stakeout and legal description from a licensed professional surveyor. WEC also prepared a Resilient Florida grant application for the project. See the attached memo and backup documents.

This Change Order constitutes full, final, and complete compensation to the Contractor for all costs, expenses, overhead, and profit, and any damages, and/or time adjustments of every kind that the Contractor may incur in connection with the above referenced changes in the Work, and any other effect on any of the Work under the Agreement. The Contractor acknowledges and agrees that (a) the Contract Price of \$103,150.00 under the Agreement will be ~~[unchanged]~~ [changed] by this Change Order, and (b) the schedule for performance of Work will be ~~[unchanged]~~ [changed] by this Change Order. Contractor expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder. Any defined terms not defined in this Change Order shall have the meanings set forth in the Agreement.

By signing below the parties indicate acceptance of this Change Order as set forth herein.

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CONSENT OF SURETY TO CHANGE ORDER

The Surety Agrees that this change order is not a cardinal change and if the Change Order includes an increase in the Contract amount, then the penal amount of the payment and performance bond issued for this Contract is increased by the dollar amount of this Change Order.

Not Applicable (Seal)

Surety's Name and Corporate Seal

By: George Barrett  
Signature and Title  
City of Marathon

Attest: Edward R. Castle  
Signature and Title  
Contractor

By: George Barrett  
Name: George Barrett  
Title: City Manager

By: \_\_\_\_\_  
Name: Edward R. Castle  
Title: Vice President, Weiler Engineering

Exhibit "1"

CHANGE ORDER SUMMARY

This Change Order is necessary to cover changes in the Work to be performed under this Agreement. Except as may be modified herein all of the provisions of the Agreement apply to and govern all Work under this Change Order.

THE FOLLOWING CHANGES ARE MADE TO THE AGREEMENT DOCUMENTS:

(1)	Original Contract Price	\$103,150.00
(2)	Current Contract Price (Adjusted by Previous Change Orders)	\$103,150.00
(3)	Total Proposed Change in Contract Price	\$58,600.00
(4)	New Contract Price (Item 2 + Item 3)	\$161,750.00
(5)	Original Contract Time	N/A
(6)	Proposed Change in Contract Time	N/A
(6.1)	Current Contract Time (Adjusted by Previous Change Orders)	N/A
(7)	Total Proposed Change in Contract Time	N/A
(8)	New Contract Time (Item 6 ± Item 7)	N/A
(9)	Original Contract Substantial Completion Date	N/A
(10)	New Contract Substantial Completion Date	N/A

CHANGE ORDER HISTORY						
Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
1	Increase to compensate for additional scope	\$103,150.00	\$58,600.00	\$0.00	\$58,600.00	N/A
<b>Total</b>					<b>\$58,600.00</b>	<b>N/A</b>

# WEILER ENGINEERING SUMMARY OF WORK COMPLETED

For



Owner:

City of Marathon  
9805 Overseas Hwy  
Marathon, FL 33050

Project:

**Sombrero Boulevard Drainage Improvements**

Prepared by:

WEILER ENGINEERING CORPORATION



201 WEST MARION AVENUE - SUITE 1306 | PUNTA GORDA | FL 33950  
TEL 941-505-1700 | FAX 941-505-1702 | WWW.WEILERENGINEERING.ORG

**AUGUST 2024**

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## Site Visits

Weiler Engineering personnel conducted several site visits throughout the pre-construction phase. This was necessary to grasp the severity of the problem and the functionality of the existing system. Particularly during and after rain events, Weiler staff observed the flooding along Sombrero Blvd. Several trips were made by Rob Farthing (WEC Inspector) to obtain GPS data of existing elevations for the entire stretch of roadway within the project extents and surrounding area as well as GPS locations of infrastructure. Additionally, Gaje Bevier (WEC Inspector) and Paul Cauldwell (WEC Inspector) made site visits to capture photos of the condition of the road after rain events. See Appendix A for some inspection photos obtained.

## Meetings

The below mentioned meetings are organized in chronological order from the beginning of the project start date through August 2024.

### Project Kick-off Meeting

A project kick-off meeting was held at the City Hall building on March 13, 2024. In attendance with the City of Marathon were Jared Weaver (Project Manager), George Garrett (City Manager), Theodore Lozier (Code Director), and Daniel Saus (Utilities Director). In attendance with Weiler Engineering were Steve Suggs (Project Manager/Engineer of Record) and Lexi Connor (Designer/Project Administrator). Topics of discussion were the project overview and objectives, the existing conditions of the project area, three main design concepts, and the next steps. Preliminary plan sheets were prepared for this meeting showing the surveyed existing elevations overlaid onto aerial imagery, showing existing and proposed road profiles, and typical details supporting each design concept. WEC agreed to provide the city with cost estimates of each option. See Appendix B for the preliminary design sheets and meeting minutes from this kick-off meeting.

### FDEP Permitting Meeting

A meeting was had with FDEP's Mark Silverman (Professional Geologist II), Yanay Ferral, Lexi Connor, and Joshua Jennings on June 13, 2024 to discuss the permitting process that would be necessary for the proposed stormwater injection well.

### SFWMD Permitting Meeting

Project Designer and Administrator, Yanay Ferral, organized a meeting with South Florida Water Management District on June 19, 2024 to discuss the permitting process that would be necessary for the stormwater management system. Also in attendance were Weiler Engineering personnel, Lexi Connor and Joshua Jennings.

### City Council Public Workshop

Initially, an informal public meeting led by City Manager George Garrett was scheduled for June 7 but was later rescheduled for June 25 as a formal City Council Workshop. During the



workshop, WEC staff attended and actively engaged with residents and community members, addressing their concerns and answering questions related to the flooding and the planned improvements.

## **SFWMD Meeting about Complaints**

Jesse Markle with SFWMD initially contacted Weiler Engineering to inquire about the historic drainage patterns in the area due to public complaints about flooding of the roadway. It was discussed that the City is actively working to solve the issue by re-engineering the stormwater system. A meeting was scheduled to address Mr. Markle's concerns with George Garrett (City Manager), Steve Williams (City Attorney), Steve Suggs (Engineer of Record), Yanay Ferral (Design Engineer/Project Administrator), Lexi Connor (Design Engineer/Project Administrator), Robin Palmer (WEC Engineer), and Michael Giardullo (WEC Engineer). It was agreed that Weiler would put together a plan of action outlining intermediate and long-term solutions to address the flooding at this meeting.

## **Scope of Work Completed to Date**

The below mentioned deliverables are organized in chronological order from the beginning of the project start date through August 2024.

### **30% Plan Set**

The 30% plan set was completed and submitted to the City of Marathon on April 26, 2024. This involved extensive analysis of the survey data provided by CHW as well as GPS points obtained by Weiler Engineering's Inspector to create existing road profiles along the entirety of Sombrero Blvd. This data was essential for creating the existing road profiles along the entire length of Sombrero Blvd. During this phase, three design options for the roadway section were considered. After careful evaluation, a design was selected that involves regrading and raising Sombrero Blvd to ensure proper drainage towards the proposed stormwater management structures, curb, and gutter systems. For more details, please refer to the 30% plan set in Appendix C.

### **Cost Estimates of 3 Design Options**

Weiler completed a report which included a more in-depth evaluation of the existing conditions, cost estimates for proposed solutions, and a recommendation of approach, which was sent to the City on May 3, 2024. This report can be found in Appendix D.

### **60% Plan Set**

The 60% plan set for the Sombrero Blvd project was completed and submitted to the City of Marathon on June 28, 2024. This milestone involved addressing comments and concerns provided by city staff regarding the project's design, in addition to including more information regarding the overall design of the project. Key tasks included determining the design requirements for the proposed pump-assisted injection well system, which encompassed selecting appropriate pumps and designing the platform for the electrical equipment.

Additionally, the design team finalized details for the proposed typical section along Sombrero Blvd and established the proposed grade elevations based on the chosen typical sections. For more details, please refer to the 60% plan set included in Appendix F.

## 90% Plan Set

The 90% plan set for the Sombrero Blvd project was completed and submitted to the City of Marathon on August 21, 2024. Achieving this milestone involved addressing comments from city staff regarding the project design and finalizing details for several key components, including the pump-assisted injection well system, the stormwater management system, and the outfall structure. Additionally, the design team completed the control panel drawings and one-line diagrams for the electrical network. The submission also covered the determination of best management practices, phasing, and the paving plan. Furthermore, permit applications were submitted to the South Florida Water Management District and the Florida Department of Environmental Protection as part of this stage. For more details, please refer to the 90% plan set included in Appendix I.

## Scope of Work to be Completed

### 100% Construction Plan Set

Following the City's review of the 90% construction plans, WEC will address any comments provided from the City. WEC will also incorporate any requirements from regulatory agencies required after the permitting process. Final plans for construction and bidding, as well as any required permit documents will be supplied to the City.

### Bidding Process

For the bidding process of the project, WEC will prepare comprehensive bid documents and a technical specification package tailored to the specific scope of work. This package will include detailed material and installation requirements, as well as general conditions that contractors must meet. Once the project is advertised for bidding, WEC will carefully review all received bids to evaluate the qualifications, responsiveness, and responsibility of each bidder.

## Unforeseen Scope of Work

### Presentation for City Council Public Workshop Meeting

To address community concerns regarding the existing flooding along Sombrero Blvd, several deliverables were prepared and presented at the workshop. WEC staff created a comprehensive PowerPoint presentation to outline both the existing and proposed conditions for Sombrero Blvd, focusing on the flooding issues and potential solutions. In attendance at this meeting from WEC was Steve Suggs (Engineer of Record) and Yanay Ferral (Design Engineer/Project Administrator). During this meeting, several community members expressed their concerns regarding the existing flooding along Sombrero Blvd and the potential solutions

were addressed to alleviate public concern. This presentation, which can be found in Appendix E, was designed to provide clear and concise information to the public.

## SFWMD Plan of Action

After the meeting with Jesse Markle (SFWMD), Weiler ran detailed storm models to prove that the proposed temporary measures will adequately handle the stormwater in this area until the permanent stormwater upgrades can be installed. A comprehensive report was prepared for the South Florida Water Management District (SFWMD) to address the flooding issues along Sombrero Blvd. This report includes a thorough analysis of both intermediate and long-term solutions aimed at alleviating flooding risks during and after storm events. The document provides detailed information about the City's current efforts to manage stormwater effectively and reduce flood risks. It outlines proposed solutions such as the development of an enhanced stormwater management system, redesigned roadway sections to facilitate better drainage, and the implementation of pump-assisted injection wells. These measures are intended to significantly improve the area's resilience to flooding. This information was gathered into the Plan of Action Report, which was sent to Jesse Markle on July 19, 2024. See Appendix G for the report sent to SFWMD and Appendix H for SFWMD's response letter, stating that they concur with the proposed use of temporary pumps to mitigate the flooding during this year's storm season.

## Required Easements

An easement was determined to be the best approach for raising the roadway along Sombrero Blvd across from the condominiums because it allows the design of the roadway to extend beyond the right of way and begin at the edge of the pavement along the condominiums. By acquiring an easement for the parking lot area of 9 Sombrero, 11 Sombrero, and 15 Sombrero Blvd, the roadway can be raised several more inches towards the southern right of way, improving drainage and reducing flooding risks. This approach ensures a more effective and sustainable solution for the area's stormwater management challenges. Weiler Engineering coordinated with adjacent property owners to discuss easements which would allow for the best design outcome. A meeting was held on July 22, 2024 with Robin Rivera (HOA President for 15 Sombrero Blvd), Jason Seitz (HOA Board Member), and John Ciccone (HOA President for 11 Sombrero Blvd). The HOA members have agreed to collaborate with WEC on granting the proposed easement for the condominium parking. This cooperation allows the roadway to be raised by a few more inches than would have been possible if the work had been confined to just the right of way. See Appendix J for the Easement Exhibit and Meeting Minutes from the Condominium Easement Meeting.

## Resilient Florida Grant Program

The Resilient Florida Grant Program was established to assist communities in addressing the challenges posed by climate change, particularly focusing on projects that aim to reduce flood risks, enhance stormwater management, and improve the resilience of critical infrastructure. Recognizing the increasing impact of severe weather events and rising sea levels, the program provides funding for projects that mitigate these risks and enhance the resilience of Florida's

infrastructure. The Sombrero Blvd project was identified as an ideal candidate for this program due to its comprehensive approach to mitigating persistent flooding issues exacerbated by storm events and sea level rise. Along with preparing the grant application, an in-depth report was prepared to support the responses, offering a comprehensive analysis of Sombrero Boulevard's drainage challenges. The report details the persistent flooding issues worsened by storm events and sea level rise, and assess risks posed to critical assets in the area. It also explores the project's innovative technologies and evaluates cost effectiveness and regulatory alignment. Key documents, such as Monroe County's Vulnerability Assessment, sea level rise models, photos of flooding, and easement exhibit are included to substantiate the report's findings. See Appendix K for the Draft of the Resilient Florida Application.

**THE APPENDICES REFERENCED ABOVE ARE AVAILABLE  
IN THE COMPLETE DOCUMENT AVAILABLE AT THE  
LINK BELOW:**

<https://www.dropbox.com/scl/fi/job0x3dshupqzktdb4tj0/Sombrero-Blvd-Drainage-Improvements-WEC-PSA-Increase-Backup-240828.pdf?rlkey=at6kwy0ff9naabqsttxkhz62r&dl=0>

**PROJECT SPECIFIC AGREEMENT**  
**Between**  
**THE CITY OF MARATHON, FLORIDA**  
**And**  
**WEILER ENGINEERING CORPORATION**  
**For**  
**Work Authorization No.**  
**Sombrero Boulevard Stormwater Improvements Project Design**  
**Permitting and Bidding**

Pursuant to the provisions contained in the "Continuing Services Agreement" between the City of Marathon, Florida (the "City") and The Weiler Engineering Corporation, (the "Consultant") dated March 10, 2020 this Project Specific Agreement authorizes the Consultant to provide the services as set forth below:

**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" included in 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 included 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**

2.1 As part of the Scope of Services and Project Schedule, the Consultant shall provide to the City the following Deliverables as included in Exhibit "2".

### **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 "2". 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" **\$103,000.00** plus reimbursable expenses not to exceed **\$150.00**. Total not to exceed amount for this Work Authorization is **\$103,150.00**. [ AND, "CITY AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED **N/A**. FOR A MAXIMUM CONTRACT AMOUNT OF **\$N/A**

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, 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" (**N/A**), 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 or his/her designee 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.

## **SECTION 7. COMPLIANCE WITH LAW**

7.1 **COMPLIANCE WITH LAWS** – The parties shall comply with all applicable local, state and federal laws and guidelines relating to the services that are subject to this Agreement. Federal regulations apply to all of the City of Marathon contracts using Federal funds as a source for the solicitation of goods and services. The following Federal requirements apply to this Emergency Agreement:

7.2 **ACCESS BY THE GRANTEE, SUBGRANTEE, FEDERAL GRANTOR AGENCY AND COMPTROLLER GENERAL:** The Contractor shall allow access by the grantee, sub grantee, Federal grantor agency and Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.

7.3 **CLEAN AIR AND WATER ACTS:** The Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1386), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), (Contracts and/or subcontracts, and sub grants of amounts in excess of \$100,00.00).

7.4 **CONTRACT WORK HOURS AND SAFETY STANDARDS:** The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Constructions contracts awarded by grantees and sub grantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers.)

7.5 **COPELAND ANTI-KICKBACK ACT:** The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and sub grants for construction repair).

7.6 **COPYRIGHTS:** The Grantee is free to copyright original work developed in the course of or under the agreement. FEMA reserves a royalty-free, nonexclusive and

irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. Publication resulting from work performed under this agreement shall include an acknowledgement of FEMA financial support, by granted number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA views.

**7.7 DISADVANTAGED BUSINESS ENTERPRISES (DBE) CONTRACTORS:**

The contractor agrees to ensure that Disadvantage Business Enterprises as defined in 49 C.F.R. Part 23, as amended, have the maximum opportunity to participate in the performance of contracts and this agreement. In this regard, contractor shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 23, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. The contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of federal assisted contracts.

**7.8 ENERGY POLICY AND CONSERVATION ACT:** The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

**7.9 EQUAL EMPLOYMENT OPPORTUNITY:** The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 C.F.R. Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees).

**7.10 REPORTING:**

**7.10.1 Reports Submission:** Per 44 CFR 13.50, when the appropriate grant award performance period expires, the Grantee shall submit the following documents within 90 days: (1) Financial performance or Progress Report; (2) Financial status Report (SF 269) or outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable); (3) Final request for payment (SF-270) (if applicable); (4) Invention disclosure (if applicable); and (5) Federally-owned property report.

**7.10.2 Reports Acceptance:** FEMA shall review the Grantee reports, perform the necessary financial reconciliation, negotiate necessary adjustments between the Grantee's and FEMA's records, and close grant in writing.

**7.11 RETENTION OF ALL RECORDS:** The Contractor is required to retain all records for three (3) years after grantees or subgrantees make final payments and all other pending matters are closed.

**7.12 BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)**—  
Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**SECTION 8 INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT**

8.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated **March 10, 2020** 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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## **SECTION 9 Term/Time of Performance**

9.1 This Project Specific Agreement shall be effective on the date it is fully executed by all parties and shall continue in full force for 2 year (s) or until completion of the Project, unless otherwise terminated pursuant to the Construction Management Services Agreement or other applicable provisions of this Project Specific Agreement. The City Engineer or Manager, in his sole discretion, may extend the term of this Project Specific Agreement through written notification to the Consultant. Such extension shall not exceed 180 days. No further extensions of this Project Specific Agreement shall be effective unless authorized by the City Engineer or Manager.

9.2 The Consultant's services under this Project Specific Agreement and the time frames applicable to this Project Specific 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 prior to the beginning the performance of services.

9.3 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."

## **SECTION 10 Project Records**

10.1 All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

10.2 After the City's acceptance of final plans and documents, an electronic copy of the Consultant's or the sub consultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

10.3 Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

10.4 The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

10.5 All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of City, and reproducible copies shall be made available upon request to the City.

10.6 All project records shall be maintained by Consultant and made available upon request of the City of Marathon.

10.7 City at all times for the duration of this Agreement and during the period stated by Florida Records Retention Schedules. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

#### **SECTION 11 Ownership and Access to Public Records.**

11.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

11.2 The Consultant is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for

retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.

- 11.3 "Public Records" is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.
- 11.4 Should the Consultant assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the CONSULTANT.
- 11.5 The Consultant consents to the City's enforcement of the Consultant's Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the Consultant shall pay all court costs and reasonable attorney's fees incurred by the City.
- 11.6 The Consultant's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the Consultant shall be grounds for immediate unilateral cancellation of this Agreement by the City.
- 11.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, [CITYCLERK@CI.MARATHON.FL.US](mailto:CITYCLERK@CI.MARATHON.FL.US), OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

## **SECTION 12 E-VERIFY**

12.1 **E-Verify System** - Beginning January 1, 2021, in accordance with F.S. 448.095, the Contractor and any subcontractor shall register with and shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees hired by the subcontractor during the Contract term. Any subcontractor shall provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall comply with and be subject to the provisions of F.S. 448.095

**PAYMENT UNDER THIS PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this 8 day of January, 2024.

**CONSULTANT:**

**CITY:**

By: Edward Castle

By: George Barrett

Its: Vice President

Its: City Manager

**ATTEST:**

Diane Clavier  
Diane Clavier, City Clerk

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

Attila Wilk  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

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**EXHIBIT "1"**  
**PROJECT DESCRIPTION**

The City of Marathon wishes to perform a retrofit project on an existing stormwater management system located along Sombrero Boulevard which serves City right-of-ways and private properties located on Sombrero Boulevard (refer to Exhibit "C" herein for the approximate limits of the affected area). The existing stormwater system is comprised of inlet structures, gravity injection wells and solid and perforated pipe installed prior to the City- wide stormwater project and as part of the City-wide stormwater project. The elevations in the area are low and the system does not have the capacity to remove surface water from the right-of-ways during some storm events, particularly during high tide. The retrofit project will include an evaluation of the existing system and recommendation of upgrades.

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**EXHIBIT "2"**  
**SCOPE OF SERVICES AND PROJECT SCHEDULE**

**SCOPE OF SERVICES**

The Weiler Engineering Corporation (WEC) will assist the City in a stormwater improvement project in the vicinity of Sombrero Boulevard by providing Design, Permitting and Bidding Phase (this authorization). Construction Phase Engineering Services are not included in this authorization (but may be provided in a future authorization if requested).

**Deliverables will include:**

**Design, Permitting and Bidding Phase**

- Preliminary Design Drawings and 3 options to be considered;
- Preliminary Design Meeting with the City of Marathon to discuss options;
- 30%, 60% and 90% Construction Drawings;
- Response to City of Marathon Comments on 30%, 60% and 90% Construction Drawings;
- Final Construction Plan Set;
- Regulatory Permits as required for construction of the proposed improvements;
- Detailed Technical Specifications specific to scope of work;
- Schedule of Values (Bid Form);
- Engineer's Construction Opinion of Probable cost;
- Prepare bid package for publication by the City;
- Conduct a Pre-Bid Meeting and prepare minutes;
- Respond to inquiries from bidders; and
- Prepare Bid Tabulation and Recommendation of Award.

**PROJECT SCHEDULE**

CONSULTANT will begin work upon execution of this Work Authorization.

TASK	Completion Time (Calendar Days)
Complete Data Collection, Survey and Field Evaluation	60 Days from NTP
Submission of Preliminary Design Drawings to City	90 Days from NTP
Submission of 90% Construction Drawings	30 Days following City review of Preliminary Design
Submission of Applications for Regulatory Permits	30 days following Completion of 90% Plans
Response to City Comments/Final Construction Documents	30 Days following receipt of City 90% Comments
Bidding	30 Days following receipt of City final review of Plans and Specifications
Recommendation of Award	15 Days following receipt of bids.
<b>Construction Phase services will be completed under a separate work authorization when the City moves forward with the project.</b>	

## **GENERAL UNDERSTANDING**

See Exhibit 1

## **SECTION 1**

### **1.0 PROJECT SCOPE OF WORK**

#### **Design, Permitting and Bidding Phase**

##### *Task 1.01 - Data Collection/ Field Evaluation*

WEC will obtain any historical data available such as survey and as-built data from the City- water sewer, stormwater and road paving project, information on the existing well system if available through the City of Marathon, available permit information for existing wells through the Florida Department of Environmental Protection and available LIDAR topographic data.

WEC will contract with a Florida Registered Surveyor to prepare a right-of-way survey from Manor Lane to Skipjacks Resort (+/- .5 Miles).

WEC will also perform an inspection of the inlet structures and surface features included in the drainage basin to determine any recommended system modifications or repairs and maintenance needs.

##### *Task 1.02 - Preliminary Design & 3 Options*

Based on the information gather in task 1.01, WEC will produce a preliminary design showing the location of the recommended improvements. This preliminary design will look at three (3) possible approaches or combinations of approaches to address the flooding issue. Please note that the approach is generally understood to be regarding, additional stormwater features, road elevation adjustments, and likely a pump assisted injection well. Once reviewed by the City, the selected approach option and preliminary design will serve as the road map for the detailed construction plan design and permitting. WEC will provide this conceptual design to the City for review.

##### *Task 1.03 - Preliminary Design Review Meeting*

WEC will perform up to two (2) meetings with the City's Project Representative regarding the preliminary design. WEC will address any questions from the Project Representative before proceeding with the detailed design phases.

##### *Task 1.04 - 30%, 60%, 90% Construction Plans*

Based on the approved preliminary design, WEC will prepare detail construction plans clearly depicting the scope of work including location of proposed improvements, materials used and Contractor requirements.. The plan set will include the following at

a minimum: cover sheet, aerial location map, general notes, existing conditions, plan sheets depicting location of proposed improvements relative to existing features, profile views as required, detail sheets including pump station details, project specific notes and best management practices plan. Progress sets at 30%, 60%, and 90% will be sent to the City for review and comment. Please note that the 30% and 60% progress sets will have all of the above listed minimum sheets as the design will continue to be developed based on review comments.

#### *Task I.05 - Regulatory Coordination and Permitting*

During the preliminary design phase, WEC will coordinate with the South Florida Water Management District (SFWMD) and the Florida Department of Environmental Protection (FDEP) to determine permitting requirements. SFWMD may require a new Environmental Resource Permit (ERP) or a modification to the existing ERP. The FDEP may require a modification to an existing well permit as part of the conversion from gravity injection to pump assisted injection. Permit applications will be submitted following City review of the 90% construction plans. Any required permit fees shall be supplied by the City.

#### *Task I.06 - Final Construction/ Bid Plans*

Following the City's review of the 90% construction plans, WEC will address any comments provided from the City. WEC will also incorporate any requirements from regulatory agencies requiring during the permitting of this project. WEC will provide final plans for construction and bidding signed by a Florida Registered Professional Engineer. Any required permit documents will be supplied to City with the final construction plans. Final deliverable will include one (1) signed and sealed construction plan set and one digital signed and sealed construction plan set.

#### *Task I.07 - Generation of Technical Specifications*

WEC will generate a separate technical specifications package specific to the scope of work. The technical specifications package will address material and installation requirements as well as general conditions such as mobilization, maintenance of traffic, measurement and payment, etc.. The technical specifications package will be signed and sealed by a Florida Registered Professional Engineer and will be provided with the final construction plans. Final deliverable will include five (5) signed and sealed technical specification packages and one (1) CD containing a PDF file of the signed and sealed technical specification package.

#### *Task I.08 - Generation of Schedule of Values and Engineer's Estimate*

WEC will provide a list of pay items with quantity and unit of measure for use as the bid form in the bid documents. WEC will also prepare an engineer's estimate of construction cost. An engineer's estimate will be submitted along with the 90% construction plans and a final engineer's estimate will be submitted with the final

construction plans. The schedule of values will be submitted with the final construction plans.

*Task 1.09 – Bidding*

WEC will provide an Invitation to Bid package in PDF format to the City for public advertising. After publication, WEC will assist the City by preparing responses to inquiries from prospective bidders and will prepare the agenda and facilitate a Pre-Bid Meeting. WEC will prepare addenda as needed. Upon completion of bidding, WEC will evaluate the bid packages for responsiveness and responsibility and will prepare a bid tabulation and a Recommendation of Award to the lowest cost responsive and responsible bidder.

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**EXHIBIT "3"**  
**PAYMENT SCHEDULE**

*All work to be performed and paid according to the percentage completion of the Work.  
Applications for Payment will be submitted with a detailed account of tasks performed.*

<i>Task 1.01 - Data Collection, Survey &amp; Field Evaluation</i>	\$12,000.00
<i>Task 1.02 - Preliminary Design</i>	\$32,000.00
<i>Task 1.03 - Preliminary Design Review Meeting (2)</i>	\$2,640.00
<i>Task 1.04 - 90% Construction Plans</i>	\$26,000.00
<i>Task 1.05 - Regulatory Coordination and Permitting</i>	\$11,560.00
<i>Task 1.06 - Final Construction/ Bid Plans</i>	\$8,000.00
<i>Task 1.07 - Generation of Technical Specifications</i>	\$3,800.00
<i>Task 1.08 - Generation of Schedule of Values</i>	\$3,500.00
<i>Task 1.09 - Bidding and Recommendation of Award</i>	\$3,500.00
<i>Reimbursable Expenses (not to exceed)</i>	\$ 150.00
Total Lump Sum	\$103,150.00

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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	\$210.00
Expert Witness	\$280.00
Registered Professional Engineer (P.E.)	\$165.00
Project Manager	\$160.00
Registered Engineer Intern (E.I.)	\$140.00
Senior Engineering Designer	\$115.00
Engineering Designer	\$100.00
Construction Inspector	\$90.00
Engineering Technician	\$90.00
Clerical	\$60.00
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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**EXHIBIT "C"**  
**APPROXIMATE PROJECT LIMITS**

