

COUNCIL AGENDA STATEMENT



Meeting Date: August 9, 2022
To: Honorable Mayor & Members of the City Council
From: Dan Saus, Utilities Manager
Through: George Garrett, City Manager

Agenda Item: **Resolution 2022-80**, Awarding contract for the Engineering Response to the FOLKS lawsuit regarding shallow injection wells and the responses as required by law To Weiler Engineering Corporation.; Approving Contract in the Amount of \$50,000.00; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

The Proposal attached as Exhibit “A” details the Scope of Work and cost breakdown for the engineering response services for the FOLKS lawsuit regarding shallow injection wells. City staff, consisting of the Utility Director and the Utility Staff, has reviewed the proposal of Weiler Engineering Corporation., and the proposal is reasonable for the work as shown on Exhibit “A” in the amount of \$50,000.00.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>X</u>	___
2. Other – 2010 Sewer Mandate	<u>X</u>	___
3. Not applicable	<u>X</u>	___

FISCAL NOTE:

The FY22 Adopted Wastewater Utility budget includes appropriations of \$75,000 for professional engineering services unrelated to capital outlay projects.

RECOMMENDATION:

Approval of Resolution

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2022-80**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AWARDING A WORK AUTHORIZATION FOR RESPONSE TO THE FOLKS LAWSUIT REGARDING SHALLOW INJECTION WELLS TO WEILER ENGINEERING CORPORATION; APPROVING THE PROJECT AGREEMENT IN THE NOT TO EXCEED A TOTAL AMOUNT OF \$50,000.00; 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 April of 2020; and

WHEREAS, the work specific agreement (the “Project Agreement”) contains the scope of work to provide professional engineering services required for the response to the FOLKS lawsuit regarding shallow injection wells, the “Project”); and

WHEREAS, the city staff and the City Manager wish to enter into this agreement for a lump sum of \$50,000.00.

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 9th DAY OF AUGUST 2022.

THE CITY OF MARATHON, FLORIDA

John Bartus, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

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:**

Steve Williams, City Attorney

EXHIBIT "A"
PROJECT SPECIFIC AGREEMENT

FOLKS Suit
City of Marathon Shallow Effluent Injection Wells

PSA 22-12

PROJECT SPECIFIC AGREEMENT
Between
THE CITY OF MARATHON, FLORIDA
And
The Weiler Engineering Corporation
For
FOLKS Suit City of Marathon Shallow Effluent Wells

Pursuant to the provisions contained in the “Continuing Services Agreement” between the City of Marathon, Florida (the “City”) and 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 “1”.

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 "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 \$0. Total not to exceed amount for this Work Authorization is \$_____. [AND, "CITY AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED \$50,000.00 FOR A MAXIMUM CONTRACT AMOUNT OF \$50,000.00

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 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@CL.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 _____ day of _____, 2022.

CONSULTANT:

CITY:

Edward R. Castle

By: Edward R. Castle, PE

By: _____

Its: Vice President

Its: _____

ATTEST:

Diane Clavier, City Clerk

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

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.

**EXHIBIT “1”
PROJECT DESCRIPTION**

The Weiler Engineering Corporation (WEC) will provide assistance to the City of Marathon in its defense in the FOLKS vs City of Marathon suit (Civil Action No. 4:22-cv-10002) and will provide the services of Edward R. Castle, PE, as Expert Witness.

Scope of Work will include:

- Prepare electronic files for Production per subpoena issued to Weiler Engineering Corporation dated 5/20/2022. Files will include all engineering documents related to the design and permitting of the City’s wastewater treatment plants (WWTPs) and its effluent injection wells.
- Prepare Engineers Report providing details of the WWTP components and calculated hydraulic retention times in theoretical outfall pipes from each WWTP to theoretical discharge points on both Ocean and Bay sides of the islands.
- Review and comment on reports by others, including FOLKS and its witnesses and experts.
- Provide rebuttal reports and testimony as needed.
- Attend meetings with the City of Marathon and its Counsel to discuss the case and to prepare for testimony.
- Provide depositions for both FOLKS and City of Marathon as requested.
- Attend and testify in any trials, hearings or mediations.
- Respond to interrogatories from FOLKS Counsel

EXHIBIT “2”
SCOPE OF SERVICES AND PROJECT SCHEDULE

Date: July 18, 2022

SCOPE OF SERVICES

For Project Name: FOLKS Suit City of Marathon Shallow Effluent Wells

GENERAL UNDERSTANDING

The City is currently being sued by FOLKS for its use of shallow wells for disposal of effluent treated to AWT standards. FOLKS contends that the discharges through shallow wells are the functional equivalent of a direct discharge to navigable waters, which if upheld would require either NPDES permitting or abandonment of the shallow wells. The City of Marathon’s WWTPs and disposal wells were designed by WEC and permitted by FDEP in compliance with all current regulations and requirements. The facilities were issued permits by FDEP for all construction of the WWTPs and wells and for operation of these same facilities. It is the City’s position that the discharges through shallow wells are not the functional equivalent of a direct discharge. WEC will provide groundwater modeling using a Professional Geologist and will assist the City with its defense of the case.

SCOPE OF WORK

- Prepare electronic files for Production per subpoena issued to Weiler Engineering Corporation dated 5/20/2022. Files will include all engineering documents related to the design and permitting of the City’s wastewater treatment plants (WWTPs) and its effluent injection wells.
- Prepare Engineers Report providing details of the WWTP components and calculated hydraulic retention times in theoretical outfall pipes from each WWTP to theoretical discharge points on both Ocean and Bay sides of the islands.
- Review and comment on reports by others, including FOLKS and its witnesses and experts.
- Provide rebuttal reports and testimony as needed.
- Attend meetings with the City of Marathon and its Counsel to discuss the case and to prepare for testimony.
- Provide depositions for both FOLKS and City of Marathon as requested.
- Attend and testify in any trials, hearings or mediations.
- Respond to interrogatories from FOLKS Counsel

PROJECT SCHEDULE

- Work to begin on execution of this Project Specific Agreement and shall proceed to final resolution of the suit.

**EXHIBIT “3”
CONSULTANT’S HOURLY RATES**

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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