

Sponsored by: Puto

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2006-102**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A PROJECT AGREEMENT WITH CHEN AND ASSOCIATES FOR THE PREPARATION OF THE MANDATORY MS4 ANNUAL REPORT FOR SUBMISSION TO THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION IN AN AMOUNT NOT TO EXCEED \$30,920**

**WHEREAS**, the City of Marathon (the "City") has been designated by the State Department of Environmental Protections (the "FDEP") as a phase II MS4 area (the "Designation"); and

**WHEREAS**, in response to the Designation the City is engaged in a capital improvement project to construct and install stormwater management infrastructure in the City (the "Stormwater Utility") to reduce pollutant loading of our near shore waters; and

**WHEREAS**, as part of the Designation the City is required to file an annual report with FDEP indicating how the City is implementing best management practices in constructing and operating the Stormwater Utility; and

**WHEREAS**, the City of Marathon, Florida (the "City"), has a continuing services agreement with Chen and Associates to provide design, engineering and related services to the City from time to time under individual project agreements; and

**WHEREAS**, the Consultant has submitted a proposal to prepare the FDEP required annual report, and other tasks as delineated in Project Agreement #2 in an amount not to exceed \$30,920, which cost is a budgeted item in the City's Capital Infrastructure Fund.

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

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

**Section 2.** The Project Agreement between the City and Consultant to prepare the required MS4 annual report for submission to FDEP in an amount not to exceed \$30,920, a copy of which is attached 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 approved. The City Manager is authorized to sign the Project Agreement.

**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 11<sup>th</sup> day of July, 2006.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Marjie Mearns, Vice Mayor**

AYES: Pinkus, Worthington, Tempest, Mearns  
NOES: None  
ABSENT: Bull  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier  
City Clerk

(City Seal)

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

  
\_\_\_\_\_  
City Attorney

RECEIVED  
JUL - 7 2006

BY: OT

**EXHIBIT "A"**

**PROJECT AGREEMENT**

Between

CITY OF MARATHON, FLORIDA

And

CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC.

for

Work Authorization No. 2

Evaluation of Stormwater Utility Fund Tax Roll  
&  
FDEP MS4 Annual Report Preparation

PROJECT AGREEMENT

Between

THE CITY OF MARATHON, FLORIDA

And

CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC.

For

Work Authorization No. 2

Evaluation of Stormwater Utility Fund Tax Roll

&

FDEP MS4 Annual Report Preparation

Pursuant to the provisions contained in the "Continuing Services Agreement" between the CITY OF MARATHON, FLORIDA (the "CITY") and CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC.. ("CONSULTANT") dated June 23, 2004, this Project Agreement authorizes the CONSULTANT to provide the services as set forth below:

The CITY and CONSULTANT agree as follows:

**SECTION 1. SCOPE OF SERVICES**

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

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

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

**SECTION 2. DELIVERABLES**

As part of the Scope of Services and Project Schedule, the CONSULTANT shall provide to the CITY the Deliverables as described in the "Scope of Services and Project Schedule" listed 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 until complete, 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 30 days. No further extensions of this Agreement shall be effective unless authorized by the CITY Council.

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

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the CONSULTANT shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this Agreement as Exhibit "3". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

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

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



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

#### **SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION**

4.1 **Lump Sum Compensation.** CITY agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit "2" \$30,920.

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

#### **SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT**

##### **5.1 Invoices**

5.1.1 **Lump Sum Compensation and Reimbursable Expenses.** 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 phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule set forth in Exhibit "3", to this Project Agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by 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 until the project is completed. Said retainage may be withheld at the sole discretion of the City Manager and as security for the successful completion of the CONSULTANT'S duties and responsibilities under the Project Agreement.

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

## **SECTION 6. TERMINATION/SUSPENSION**

6.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Project Agreement or causes it to be terminated by the CITY, the CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. In the event that the CONSULTANT is terminated by the CITY for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

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

6.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONSULTANT's work product shall become the property of the CITY and the CONSULTANT shall, within ten (10) working days of receipt of written direction from the CITY, transfer to either the CITY or its authorized designee, a copy of all work product in its

possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONSULTANT pertaining to this Project Agreement. Further, upon the CITY'S request, the CONSULTANT shall assign its rights, title and interest under any subcontractor's agreements to the CITY.

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

## **SECTION 7. INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT**

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



ATTEST:

CITY OF MARATHON



Diane Clavier, City Clerk

By: 

Michael Puto, City Manager

Date: 7/20/06

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



City Attorney

ATTEST:

CHEN AND ASSOCIATES CONSULTING  
ENGINEERS, INC.



Oscar Bello  
Corporate Secretary

By: 

Peter Moore, P.E.  
Vice President

Date: July 5, 2006

(CORPORATE SEAL)

WITNESSES:



Print Name: Jason McClair



Print Name: Carlos Tijerino

## **Exhibit "1"**

### **Project Description**

In 2005, Chen and Associates completed a tax roll for Stormwater Fees and submitted it to the County. The tax roll must be updated each year to reflect changes in property ownership and stormwater rates. In order to update the tax roll, the following steps must be completed. The parcel data from 2006 must be collected from the County Property Appraiser. The 2006 parcel data must be compared to the 2005 parcel data to identify changes in property information. Additional information from stormwater rate appeals must be studied. All parcels which have changed in parcel geography, land use, or other categories must be re-analyzed to determine their effect on estimated Equivalent Residential Units (ERU). Parcels with appeals must be updated. A new tax roll must then be updated and submitted to Monroe County. A new aerial photograph of the County is not currently available. Therefore, verification of ERUs will require the review of building permits for building sizes and the performance of site inspections. When an updated aerial becomes available, much of the analysis can be made from the new aerial.

In 2005, Chen and Associates also prepared the FDEP MS4 Permit application for the City. The permit application was submitted to and approved by FDEP. The FDEP MS4 permit established a list of Best Management Practices (BMP) which must be implemented each year. The permit requires the City to submit an annual report to FDEP to track the City's progress toward completing the goals within the application each year. Chen & Associates will prepare the annual report to be submitted this year. Chen & Associates will help the City to consolidate the necessary documentation to be submitted with the annual report.

## **Exhibit “2”**

### **Scope of Services and Project Schedule**

Chen and Associates will provide professional services to City of Marathon for updating the storm water tax roll and the preparation of the annual MS4 report. The following tasks will be performed are outlined below:

#### **Task 1 – Data Analysis**

##### **1.1 Review Changes in Parcel Data**

With assistance from the CITY, the ENGINEER will obtain existing property information from the Property Appraiser for consideration in the tax roll analysis. ENGINEER shall obtain any available building information from the CITY for analysis of impervious areas. ENGINEER shall make a comparative analysis of old and new parcel data and update the tax roll as necessary.

##### **1.2 Review of Assessment Appeals**

ENGINEER shall obtain all information on appeals to the stormwater utility fee from the CITY for consideration in the tax roll analysis. ENGINEER shall enter appeals information supplied by the CITY into the database.

##### **1.3 Update Tax Roll**

ENGINEER shall revise the tax roll taking into account exemptions for charitable or non-profit organizations, educational institutions and appeals. ENGINEER shall allocate the costs to the properties based on the final number of ERUs.

#### **Task 2 – Tax Roll Submittal**

##### **2.1 Council Workshop**

No CITY Council meeting is included in this proposal.

##### **2.2 Approval of Final Charges and Tax Roll by Council**

ENGINEER shall assist the CITY in final approval of all methods, exemptions, and applicable charges by the CITY Council. The results will be the revision of charges for each property

##### **2.3 Submission of Final Tax Roll**

ENGINEER shall assist the CITY in submitting the tax roll to the Property Appraiser for implementation, including all follow ups and submission of all required letters.

### Task 3 – FDEP MS4 Annual Report

#### 3.1 Review of Implementation of Best Management Practices

ENGINEER shall review the progress by the CITY in implementing the Best Management Practices (BMP) required by the MS4 Permit for Year 1. CITY shall provide any required documentation on the implementation of the BMPs. According the MS4 Permit, the CITY must implement BMPs during Year 1 within the following categories: Public Education and Outreach, Public Involvement/Participation, Illicit Discharge Detection/Elimination, Construction Site Stormwater Runoff Control, and Pollution Prevention/Good Housekeeping. ENGINEER will help the CITY develop any required standard operating procedures required by the MS4 Permit.

#### 3.2 Preparation of Annual Report

ENGINEER shall prepare the MS4 annual report in the format required by FDEP. CITY shall provide all necessary documentation required to be submitted with the report. Documentation will be required from the CITY in reference to the implementation of Best Management Practices as required within the MS4 Permit.

#### 3.2 Review Meetings

Should the DPEP decide to audit the CITY's implementation of Best Management Practices required within the MS4 Permit, ENGINEER will help the CITY prepare for an audit meeting with DPEP. The ENGINEER shall attend the audit meeting with the project manager from the CITY.

### Task 4 – Reimbursements

#### 4.1 Travel Costs

ENGINEER shall be reimbursed for travel costs for any required meetings within the CITY. The mileage will be reimbursed at \$0.445 per mile.

#### 4.2 Printing Costs

ENGINEER shall be reimbursed for any printing costs for any documentation required by the CITY.

#### 4.3 Printing Costs

ENGINEER shall be reimbursed for any postage costs for any mailers required by the CITY.

### **CITY RESPONSIBILITY**

- a) CITY shall provide available existing GIS files.
- b) CITY shall provide available existing as-built drawings in digital format.
- c) CITY shall provide copies of all correspondence from FDEP in reference to the MS4 Permit to the ENGINEER.
- d) CITY shall provide all backup information on the implementation of Best Management Practices required by the MS4 permit for submittal with annual report to FDEP.
- e) CITY shall respond to questions of missing data in a prompt manner.
- f) CITY shall assign one project manager for purpose of review and acceptance. Notification in writing will be required should the CITY wish to change said project manager.

### **SCHEDULE OF SERVICES**

The adjusted Stormwater Tax Roll shall be submitted to the CITY for review no later than 4 weeks from the Notice to Proceed. ENGINEER shall determine the date of submittal to the County and inform the CITY. ENGINEER shall submit the revised tax roll to the CITY. The submittal of the MS4 annual report to FDEP will depend on the availability of necessary information from the CITY. The MS4 Annual Report shall be submitted to the CITY for review no later than 4 weeks after receiving necessary backup information from the CITY.

### **DELIVERABLES**

ENGINEER shall deliver a database file of all properties, respective ERUs and revised tax amounts. ENGINEER shall submit a summary sheet of ERUs per land use type. ENGINEER shall compile necessary information from the CITY and shall deliver the MS4 Annual Report with backup documentation to the CITY for review prior to submittal to FDEP.

## EXHIBIT “3”

### Payment Schedule

#### **ENGINEER’S COMPENSATION**

Task 1 – Data Analysis:	\$6,535
Task 2 – Tax Roll Submittal:	\$3,410
Task 3 – FDEP MS4 Annual Report:	\$15,975
Task 4 – Reimbursements:	\$5,000
Total:	\$30,920

#### **CHEN AND ASSOCIATES CONSULTING ENGINEERS, INC.\***

Principal.....	\$ 165.00
Project Manager.....	\$ 120.00
Senior Engineer.....	\$ 100.00
Engineer.....	\$ 75.00
Construction Manager.....	\$ 75.00
Construction Inspector.....	\$ 60.00
Technician/Clerical.....	\$ 50.00

Principal: Category refers to individuals that serve as overall quality control/quality assurance agent for the project. Typical duties include project meetings, review sessions and contractual questions.

Project Manager: Category refers to individuals that serves as the singular point of contact between the project and all other entities. Direct supervision of all duties including planning, design, permitting and construction.

Senior Engineer: Category refers to individuals that serve as the lead in all planning or design matters. Typical duties involve preliminary project production, design calculations, permit packages.

Engineer: Category refers to individuals that serve as the production staff for all planning or design matter. Typical duties involve final project production, plan revisions, modeling.

Construction Manager: Category refers to individuals that serve as the lead in all construction and certification matters. Typical duties involve constructability review, construction administration and project closeout.

Construction Inspector: Category refers to individuals that serve as the production staff for all construction and certification matters. Typical duties involve daily reports, construction testing, daily photographs.

Technician/Clerical: Category refers to individuals that serve in an auxiliary capacity for all projects. Typical duties involve drafting, typing, filing.