

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2023-60**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A CONTRACT WITH JUTURNA CONSULTING LLC. IN THE AMOUNT OF (HOURLY RATES) BUT NOT TO EXCEED \$207,514.40; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the “City”) wishes to perform a Wastewater Effluent Disposal Study and put the bid requirements out on DemandStar, and

WHEREAS, Juturna Consulting LLC. was the only responsive and responsible bidder,

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

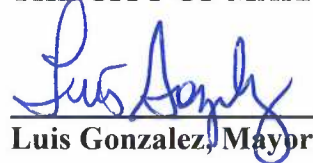
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves award of a contract to Juturna Consulting for an Effluent Disposal Study in the amount of (not to exceed) \$207,514.40

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 27TH DAY OF JUNE, 2023

THE CITY OF MARATHON, FLORIDA



Luis Gonzalez, Mayor

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

ATTEST:


Diane Clavier

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

Steve Williams, City Attorney

PROJECT SPECIFIC AGREEMENT

Wastewater Effluent Disposal Options Planning

PROJECT SPECIFIC AGREEMENT
Between
THE CITY OF MARATHON, FLORIDA
And
The Juturna Consulting
For
Wastewater Effluent Disposal Options Planning

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 with mutual written consent, 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 6 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 a part of 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.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Compensation.** CITY AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES AND REIMBURSIBLE EXPENSES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED \$207,514.40.

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, courier services, mileage (at the GSA rate), 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 Fee Schedule set forth in Exhibit "3" to this Project Agreement. Invoices will show the total amount billed against this work authorization and shall not exceed the not-to-exceed amount without authorization from the CITY. The CITY shall pay CONSULTANT within thirty (30) calendar days of approval by the City Manager of any invoices submitted by CONSULTANT to the CITY.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the CITY for payment to the CONSULTANT is disputed, or additional backup documentation is required, the CITY shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the CITY with additional backup documentation within five (5) working days of the date of the CITY'S notice. The CITY may request additional information,

including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The CITY, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the CITY becomes credibly informed that any representations of the CONSULTANT, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the CITY's reasonable satisfaction.

5.4 **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 subconsultants, 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, unless the CONSULTANT is terminating the agreement due to the CITY's failure to provide timely approval and payment of invoices. 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT 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). (Construction 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 CONSULTANT 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.

7.7 **DISADVANTAGED BUSINESS ENTERPRISES (DBE) CONSULTANTS:** The CONSULTANT 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, CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT 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).

7.10 **BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)**—CONSULTANTS 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.

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 8 Term/Time of Performance

8.1 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 this 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.

8.2 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.

8.3 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 9 Project Records

9.1 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.

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

9.3 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.

9.4 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.

9.5 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.

9.6 All project records shall be maintained by CONSULTANT and made available upon request of the CITY.

9.7 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 10 Ownership and Access to Public Records.

10.1 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.

10.2 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.

10.3 "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.

10.4 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.

10.5 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.

10.6 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.

10.7 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, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.

SECTION 11 E-VERIFY

11.1 **E-Verify System** - Beginning January 1, 2021, in accordance with F.S. 448.095, the CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 30th day of June, 2023.

CONSULTANT:

CITY:

By: [Signature]

By: [Signature]

Its: owner

Its: City Manager

ATTEST:

[Signature]
for Diane Clavier, City Clerk Deputy Clerk

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

[Signature]
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

Juturna Consulting will prepare a study evaluating options for disposal of the AWT effluent from its five WWTPs. The study shall include, at a minimum, an evaluation of the options listed in its Scope of Work as presented in Exhibit "2" and as further detailed in the FOLKS v. City of Marathon *Stipulated Interim Injunctive Relief and Stay of Litigation*.

EXHIBIT “2”

SCOPE OF SERVICES AND ANTICIPATED PROJECT SCHEDULE

SCOPE OF SERVICES For CITY OF MARATHON WASTEWATER EFFLUENT DISPOSAL OPTIONS PLANNING

BACKGROUND AND OBJECTIVES

The City of Marathon operates 5 Wastewater Plants that treat domestic wastewater to Advanced Wastewater Treatment levels (AWT) with effluent disposal to shallow injection wells. Juturna Consulting, LLC (Prime Consultant) with Verdantas, Inc. and ASRus (Subconsultants), collectively referred to herewith as Firm, is to perform an analysis of options for disposal of domestic wastewater effluent that has been treated to Advanced Wastewater Treatment (AWT) levels and including high-level disinfection. The primary objective is to evaluate the disposal of treated effluent from the City’s five (5) wastewater treatment facilities one, or a combination of, the following wastewater effluent disposal options:

- A single deep injection well.
- Conventional reuse of the treated effluent.
- Direct Potable Reuse of the treated effluent (reverse osmosis).
- Indirect Potable Reuse of the treated effluent (reverse osmosis)

A “Do Nothing” alternative shall not be included in the evaluation.

SCOPE OF SERVICES

This analysis will evaluate wastewater disposal effluent options for the City to eliminate the current shallow injections wells. The options will include estimates of:

- capital costs including design, permitting and construction administration.
- annual operation and maintenance costs.
- long-term repair and replacement costs.
- Potential environmental impact of options

TASK 1 - PROJECT MANAGEMENT, MEETINGS, AND DATA COLLECTION

1.1 Contract Execution – Firm will complete a scope and fee estimate, obtain necessary insurance, negotiate subconsultant agreements and execute the Agreement with the City.

1.2 Project Management – Firm will provide monthly invoicing and progress reports, and coordinate staff and subconsultant availability to meet the project schedule requirements.

1.3 Project Closeout – Firm will submit a final invoice and complete any City required closeout activities.

Task 1 Deliverables:

- Executed Contract
- Monthly progress reports and monthly and final invoices.

TASK 2 - MEETINGS AND DATA COLLECTION

2.1 Kick-off Meeting – Firm will prepare for and conduct a kickoff meeting with City staff to establish the plan to complete the Wastewater Effluent Disposal Options Planning, and request data from the City. Consultant will review the project purpose, timeframe for completion, and confirm which members of the City staff will be involved in the project decision making process, and which external stakeholders should be included. This meeting will be an in person meeting and will include travel costs for up to four (4) Firm staff with one night of lodging. Firm will prepare and submit kickoff-meeting notes.

2.2 Data Collection – Firm will prepare a list of data items required from the City for the project.

2.3 Stakeholder Outreach – Firm will interview up to ten (10) external stakeholders to discuss the conceptual alternatives. When possible these meetings will be held electronically. Travel costs will be included for up to six (6) staff trips and up to six(6) overnight lodgings. Stakeholders will include:

- Florida Keys National Marine Sanctuary
- Florida Keys Aquaduct Authority (FKAA)
- Florida Department of Environmental Protection
- South Florida Water Management District
- Florida Department of Transportation
- Friends of the Lower Keys (FOLKs)
- Monroe County
- Potential bulk reclaimed users

2.4 Meetings – In addition to the kickoff meeting, Firm will conduct four (4) meetings with City staff. Unless otherwise noted, these meetings will be held electronically. The meetings will have the following topics:

Meeting 1 – Conceptual Alternatives Review Meeting (Task 3)

- Firm will present a draft list of up to eight (8) conceptual alternatives. The City will confirm which alternatives they would like included in the Analysis and give feedback on modifications to the alternatives to incorporate in this Project.

Meeting 2 – Alternative Evaluation Criteria, Weighting, and Ranking Methodology Meeting (Task 4)

- Firm will meet with the City to present the draft criteria and weighting that will be used to evaluate and rank the alternatives. These will include cost and non-cost criteria. Firm will provide the modified criteria, weighting, and ranking process for the Project one week after the meeting. This meeting will be an in person meeting with City staff prior to a presentation to the City Council, and will include travel costs for up to four (4) Firm staff with 2 nights lodging.

Meeting 3 – Alternatives Analysis Review Meeting (Task 5)

- Firm will meet with the City to review a preliminary summary of the Alternatives Analysis.

Meeting 4 - Draft Report Review Meeting (Task 6)

- Firm will meet with the City to review the draft report.

Meeting 5 – Presentation of the Final Report (Task 6)

- Firm will present the final results to the City Council. This meeting will be an in person meeting and will include travel costs for up to two (2) Firm staff with one night of lodging.

Task 2 Deliverables:

- Agenda prior to the kickoff meeting, and a meeting summary within one week after each meeting.
- Data request for the Kick-off meeting.
- Summaries of stakeholder outreach activities

TASK 3 – CONCEPTUAL ALTERNATIVES

Firm will compile and prepare a list of up to eight (8) conceptual alternatives. Each conceptual alternative will include a map, list of pros and cons, and preliminary estimates of the quantities of treated effluent available for beneficial reuse and/or potable water offset.

Task 3 Deliverables:

- A list of alternatives for discussion in Meeting 1.

TASK 4 – EVALUATION CRITERIA

Firm will compile and prepare a list of evaluation criteria, including cost and non-cost criteria. Cost criteria will include life cycle costs (capital and present value operating costs) for additional treatment and conveyance, and deferred or avoided costs for potable water offset. Non-cost criteria may include quantity of potable water offset, increased supply reliability during water shortages, permissibility, reduced environmental impact of existing wastewater discharge, increased staffing requirements for City staff for operation, maintenance, monitoring or reporting, risk to general public such as traffic impacts during construction, etc.

Task 4 Deliverables:

- Consultant will provide a list of evaluation criteria and proposed weighting for discussion in Meeting 2.

TASK 5 – ALTERNATIVES ANALYSIS

Consultant will evaluate up to six (6) alternatives using the criteria and weighting developed for this Project. Spreadsheet models will be used to estimate the costs and benefits that each alternative would provide. Conceptual 30-year life cycle costs, including capital and operating costs, will be developed for each alternative.

Task 5 Deliverables:

- A summary of the Alternatives Analysis for discussion in Meeting 3.

TASK 6 – REPORT

Consultant will compile and prepare a draft report of the alternatives evaluated, the evaluation criteria, and the evaluation results.

Task 6 Deliverables:

- Draft report for City review prior to Meeting 4.
- Final report after incorporating City comments.

CITY'S RESPONSIBILITY

The following shall be provided by the City, if available:

1. Reasonable access to operations, maintenance, and engineering staff.
2. Copy of previous beneficial reuse projects' estimates and evaluations.
3. Water quality and quantity data.
4. Copies of additional available record drawings, as needed, in electronic format for potable water, wastewater and storm water systems, City owned right-of-way and fee properties.
5. Copies of additional available operating reports and maintenance records.
6. Available capital and operating cost information for the existing system.
7. Geographic Information System (GIS) data for pipelines and historical usage for parcels served by water, sewer and reclaimed water.

ADDITIONAL SERVICES

Any work requested by the City that is not included in one of the items listed in this scope of services will be classified as additional services requiring additional funding and task authorization in the project budget or negotiation of a separate authorization. Additional services could include, but are not limited to:

- Water Quality Sampling
- Water Quantity Sampling
- Additional presentations to City Council
- Additional public meetings with external stakeholders
- Revisions to Final Report after review by FOLKS (if requested by the City)

SCHEDULE

The anticipated project completion schedule described below will be in effect after Notice to Proceed and requires significant coordination with City staff for achievement within the timeframe. This schedule, as shown below is 23 weeks. The following schedule is estimated for the tasks set forth in this scope of services.

Task	Completion Date
<u>Task 1 – Project Management</u>	June - November 2023
<u>Task 2 – Meetings and Data Collection</u>	
Kickoff Meeting	July 6, 2023
Meeting 1 – Conceptual Alternatives	July 28, 2023
Meeting 2 – Evaluation Criteria	August 17, 2023
Meeting 3 – Alternatives Analysis	September 14, 2023
Meeting 4 – Draft Report Review	Early November
Task 3 – Conceptual Alternatives	July 21, 2023
Task 4 – Evaluation Criteria	August 15, 2023
Task 5 – Alternatives Analysis	September 12, 2023
Task 6 – Report	
Draft Report	October 26, 2023
Final Report	November 15, 2023

BUDGET

A budget breakdown is provided by task in the table below. Work performed under this project shall be paid for on Time and Materials basis and billed monthly. Applicable GSA rates for mileage, per diem and lodging flights and rental cars, will be used for travel cost estimates.

Task	Amount
Task 1 – Project Management	\$8,075.00
Task 2 – Meetings and Data Collection	\$99,068.40
Task 3 – Conceptual Alternatives	\$17,844.00
Task 4 – Evaluation Criteria	\$13,587.00
Task 5 – Alternatives Analysis	\$35,436.00
Task 6 – Report	\$33,504.00
Total	\$207,514.40

EXHIBIT "3"
CONSULTANT'S HOURLY RATES

City of Marathon Effluent Disposal Options Evaluation Hourly Rates

Staff Name	Position	Rate
Juturna Consulting		
Suzannah Folsom	Owner	\$ 200.00
Jon Kennedy	Senior Engineering Manager	\$ 160.00
Pamela London-Exner	Senior Water Quality Scientist	\$ 140.00
Ryan Martin	Senior professional Engineer	\$ 140.00
Anne Saylor	Staff Engineer	\$ 110.00
Brian Norman	Staff Engineer	\$ 110.00
Faith Hauhe	Student Intern	\$ 50.00
Verdantas		
Steven Folsom	Regional Vice President	\$ 265.00
Jim Dozier	Senior Professional Geologist	\$ 173.00
Nigel Lewis	Civil Engineer	\$ 158.00
Ken Badgley	GIS Technician	\$ 114.00
ARSus		
Mark McNeal	Owner	\$ 210.00
Joe Haberfeld	Senior Professional Geologist	\$ 180.00
Pete Larkin	Senior Professional Geologist	\$ 180.00
Marty Clasen	Senior Professional Geologist	\$ 180.00

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UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION

Case Number: 22-10002-CIV-MARTINEZ-BECERRA

FOLKS – FRIENDS OF THE LOWER
KEYS, LLC,

Plaintiff,

v.

CITY OF MARATHON, FLORIDA,

Defendant.

**ORDER ON THE JOINT MOTION FOR STAY AND EXTENSION OF TRIAL AND
EXTENDING CERTAIN PRETRIAL DEADLINES AND CONTINUING TRIAL**

THIS CAUSE came before this Court on the Joint Motion for Stay and Extension of Trial Schedule Deadlines and Continuance of Trial Date (the “Motion”), (ECF No. 33). This Court has reviewed the Motion, pertinent portions of the record, and applicable law and is otherwise fully advised of the premises. The Parties agree that this action should be stayed pending the conclusion of Defendant’s “comprehensive study of potential changes to [Defendant’s] sewage infrastructure system (the “Feasibility Study”), which will be complete by November 15, 2023.” (*Id.* ¶ 2.) After carefully considering the circumstances set forth in the Motion, this Court finds good cause to stay this action until Monday, January 8, 2024; extend the pretrial deadlines; and continue trial. Accordingly, it is **ORDERED AND ADJUDGED** that:

1. The Motion, (ECF No. 33), is **GRANTED IN PART** as set forth herein.
2. This action is **STAYED** until **Monday, January 8, 2024**. The Clerk is **DIRECTED** to automatically **LIFT** the stay on that date.
3. The Clerk is **DIRECTED** to **ADMINISTRATIVELY CLOSE** this action for

statistical purposes only. This shall not affect the Parties' substantive rights.

4. The previous Calendar Call and Trial Period are **CANCELLED**. Trial is **RESCHEDULED** to commence during the two-week period beginning **Monday, July 22, 2024, at 9:30 a.m.**, before Jose E. Martinez, United States District Judge, 301 Simonton Street, Courtroom 1, Key West, Florida. Calendar Call will be held on **Thursday, July 18, 2024, at 1:30 p.m.**, at 400 N. Miami Avenue, Courtroom 10-1, Miami, Florida 33128. All counsel may appear by telephone at Calendar Call. If appearing by phone, a few minutes before 1:30 p.m., counsel shall call the toll-free number, 1-888-684-8852; and:

- a. Enter Access Code Number 7677597 followed by the # sign;
- b. Enter Security Code Number 5590 followed by the # sign; and
- c. State your name, the name of the party you represent, and enter the Conference.

5. Accordingly, the pretrial deadlines are modified as follows:

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| 1-8-2024 | Mediation shall be completed. |
| 1-22-2024 | Parties shall exchange expert witness summaries and reports. |
| 2-12-2024 | Parties shall exchange written lists containing the names and addresses of all witnesses intended to be called at trial and only those witnesses listed shall be permitted to testify. |
| 3-1-2024 | Parties exchange rebuttal expert witness summaries and reports. |
| 3-29-2024 | All discovery, including expert discovery, shall be completed. |
| 4-29-2024 | All <i>Daubert</i> , summary judgment, and other dispositive motions must be filed. Each party is limited to filing a single <i>Daubert</i> motion of no more than 20 pages. Summary judgment motions, in addition to containing a Statement of Material Facts pursuant to Local Rule 56.1(a), shall be accompanied by a separately-filed Joint Statement of Undisputed Fact, which must include all relevant facts about which there is no material dispute. Each undisputed fact shall be individually numbered and separated by paragraphs. This filing is limited to 10 pages and does not |

otherwise change the parties' obligation to comply with Local Rule 56.1.

Note: If there are any unresolved discovery disputes pending fifteen days prior to this date, the moving party shall immediately advise the Court of all such unresolved disputes together with their status.

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| 6-7-2024 | All pretrial motions and memoranda of law must be filed. Each party is limited to filing a single motion <i>in limine</i> , which may not, without leave of Court, exceed the 20-page limit allowed by the Rules. |
| 6-21-2024 | Joint Pretrial Stipulation must be filed. |
| 7-15-2024 | Proposed jury instructions and/or proposed findings of fact and conclusions of law must be filed. |
| 7-17-2024 | Proposed <i>voir dire</i> questions must be filed. |

6. Neither Party may serve any discovery nor file any dispositive motions in this action **until and including Monday, January 8, 2024**, without first moving for this Court's leave. At any time before Monday, January 8, 2024, Plaintiff may move to lift the stay if Defendant fails to comply with the Feasibility Study, as described in and attached to the Motion, (Mot. ¶ 2; Term Sheet, ECF No. 33-1 at 2).

7. All remaining deadlines and provisions set forth in the Scheduling Order, (ECF No. 16), remain in effect. **No extensions of the deadlines set forth herein will be granted absent exigent circumstances.**

DONE AND ORDERED in Chambers at Miami, Florida, this 21 day of February, 2023.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Becerra
All Counsel of Record

EXHIBIT A

FOLKs v. City of Marathon
February 10, 2023 Term Sheet

Stipulated *Interim Injunctive Relief and Stay of Litigation*

- I. Feasibility Study to be Performed by the City
 - a. The Feasibility Study will evaluate at minimum the alternatives listed below. For each alternative, the Feasibility Study must include the costs, the funding or financing opportunities or prospects, and any revenue that could be seen by the City from each option.

<p>1.</p> <p>Deep Well Injection of all of the City's treated wastewater</p>	<p>This alternative would implement the original plan for the Marathon area as contained in the 2000 Monroe County Sanitary Wastewater Master Plan which the City's prior leadership abandoned in 2005 in favor of the existing, less costly system</p> <p>Under this alternative, each of the City's five treatment plants would transmit their sewage effluent to a single deep injection well through a force main system. The City already is connecting its treatment plants together, such as the Area 3-4 Force Main Project.</p> <p>This alternative should explore the feasibility of injection into the Boulder zone and may also explore the feasibility of injection into an intermediate depth. The shallow wells would be available for disposal of advanced wastewater treated effluent only as an emergency or maintenance backup when the deep well is not operational, under applicable law.</p>
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<p>2.</p> <p>Conventional Reuse</p>	<p>This alternative analysis must include (1) adding at least Reverse Osmosis technology to the City’s existing advanced wastewater treatment process (whether at each plant or at a central location) adequate to treat the water to re-use standards, (2) disposal alternatives for the Reverse Osmosis reject stream, (3) adding reuse customers to the existing system, and (4) storage capacity (tanks) for when supply exceeds demand (rainy season).</p> <p>The Reuse Feasibility Study may consider and update the City’s prior Reuse Feasibility Studies.</p> <p>The shallow wells would be available for disposal of advanced wastewater treated effluent only as an emergency backup measure when re-use storage is full under the same terms as the requirements for back up wells for deep wells.</p>
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FOLKs v. City of Marathon
February 10, 2023 Term Sheet

<p>3.</p> <p>Potable Water Reuse</p>	<p>This alternative must include adding at least Reverse Osmosis technology to the City’s existing advanced wastewater treatment process (whether at each plant or at a central location) adequate to treat to drinking water standards and analysis of disposal alternatives for the Reverse Osmosis reject stream. There are alternatives within this alternative, including:</p> <ol style="list-style-type: none"> 1. Whether the City can provide potable reuse directly to the City or whether to transmit it to FCAA, and if FCAA is an option, full exploration with FCAA as to whether they will accept the potable water provided by the City of Marathon. 2. Whether storage capacity is needed and if not, why not; and the appropriate storage capacity (tanks) for when supply exceeds demand (rainy season). <p>The shallow wells would be available for disposal of advanced wastewater treated effluent only as an emergency backup measure when re-use storage is full, under the same terms as the requirements for back up wells for deep wells.</p>
<p>4.</p> <p>Combined Potable and Conventional Reuse</p>	<p>Because Reverse Osmosis is required for either potable water or conventional reuse, this alternative maximizes the City’s reuse potential, which reduces the demand on the aquifer that supplies drinking water to the Keys, provides a potential revenue stream to the City from potable reuse customers, and possibly results in zero discharge to the shallow wells.</p>

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5. Combination of any of the above Alternatives	Any combination of the four alternatives above (e.g., deep well injection for Areas 3-4-5 and potable water and/or conventional reuse at Areas 6 and 7).
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The Feasibility Study shall not include a “no action alternative” (i.e., the continued use of the shallow wells as the only or primary disposal method for its treated wastewater), nor an alternative that eliminates existing advanced wastewater treatment at any of the City’s plants.

- b. The Feasibility Study must be performed by an engineering firm to be agreed between the Parties **by June 20, 2023**. Weiler Engineering and/or any of its employees may not do the study, nor may any other engineering firm which regularly conducts business with the City. The City shall adhere to the below milestones, consistent with applicable procurement regulations and best practices in the sanitary sewer industry for the above scope of work:
 - i. By **January 31, 2023**: The City shall acquire and authorize an engineer for development of Delegation of Procurement (“DPR”) Planning Request for Proposal (“RFP”) with a deadline sufficient to meet the below milestone.
 - ii. By **March 1, 2023**: The City shall complete development of the DPR Planning RFP and advertise same on Demand Star with a **May 1, 2023** deadline for bid submissions. The City shall provide FOLKS with a copy of the DPR Planning RFP and all bids received.
 - iii. By **June 14, 2023**: The City shall inform FOLKS of its selection of the engineering firm.
- c. The Feasibility Study must be complete and delivered to FOLKS by **November 15, 2023**, including the City’s selection of an alternative evaluated in the Feasibility Study as the permanent remedy that the City will accept to resolve the lawsuit.
- d. The City will keep FOLKS informed of the progress of the Feasibility Study by the first of every month until November 1, 2023.
- e. FOLKS will accept or reject the City’s alternative by **December 15, 2023**.

FOLKs v. City of Marathon
February 10, 2023 Term Sheet

II. Final Remedy Selection

a. If FOLKs agrees to the City's selected alternative, then:

- i. The Parties will enter into a Consent Decree to be lodged **within thirty days after the Parties agree to an alternative**, unless the Parties mutually agree to an extension of time. The Consent Decree will:
 1. Commit the City to the agreed selected alternative under a schedule for completion that is mutually agreeable to both Parties;
 2. Not include a civil penalty payment provision; and
 3. Release the City for FOLKs' claims for injunctive relief and civil penalties alleged in the Complaint through the date of the Court's entry of the Consent Decree.
- ii. Following the Court's entry of the Consent Decree, FOLKs will seek its attorneys' fees and costs of litigation from the Court under the statute.

If FOLKs does not agree to the City's selected alternative, the Parties will engage in mediation, commencing **January 8, 2024**. If mediation results in an impasse, then the stay will be immediately terminated and the Parties will proceed with pending litigation

FOLKs v. City of Marathon
February 10, 2023 Term Sheet

III. Stays of All Litigation

a. Federal Clean Water Act case (currently scheduled for trial in January 2024)

- i. Parties will stipulate to a stay until **February 1, 2024**, to coincide with the Feasibility Study process above and the time needed to negotiate a Consent Decree or engage in mediation thereafter, subject to extensions by the Court. The stipulation for a stay will be filed with the Court by joint motion attaching this document and a proposed scheduling order.
- ii. Prior to the expiration of the stay, the Parties shall file a joint report as to whether the Parties agree an additional stay is appropriate.
- iii. During the stay, no Party shall serve any discovery nor file any dispositive motions in this matter, without leave of the Court. FOLKs reserves the right to move the Court to lift the stay if the City is not in compliance with the Feasibility Study process.

b. DOAH Proceedings: The City will join FOLKs in their request for an extension of time in which to file Petitions or Stay the DOAH litigation on the permits for Areas 3, 4 and 6 while the federal case is pending.