

Sponsored by: Scott Janke

CITY OF MARATHON, FLORIDA
RESOLUTION 2003-105

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO AWARD A CONTRACT TO AMERICAN UNDERWATER CONTRACTORS, INC. FOR THE INSTALLATION OF 39 MOORING EMBEDMENT ANCHORS AND TACKLE IN BOOT KEY HARBOR.

WHEREAS, plans and permits for 39 moorings have been approved for installation on City owned submerged land in Boot Key Harbor; and

WHEREAS, the Mooring anchor and tackle installation project was noticed for bidding and closed on August 1, 2003; and

WHEREAS, the responsible and lowest bid of three companies was obtained from American Underwater Contractors, Inc. of Jupiter, Florida for the price of \$12,466.00.

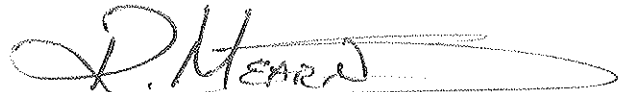
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, that:

Section 1. Council authorizes the City Manager to award a contract to American Underwater Contractors, Inc. for the installation work. Funds have been appropriated from the City of Marathon General Fund to the Repair and Maintenance Account of the Ports Department.

Section 2. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 12th day of August, 2003.

THE CITY OF MARATHON, FLORIDA



Randy Mearns, Mayor

AYES: Bartus, Pinkus, Repetto, Worthington, Mearns
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

A handwritten signature in cursive script, appearing to read "Cindy L. Ecklund", written over a horizontal line.

Cindy L. Ecklund
City Clerk

(City Seal)

AGREEMENT FOR INSTALLATION OF MOORINGS

THIS AGREEMENT (the "Agreement") dated this 2nd day of September, 2003, is made by and between the City of Marathon, a Florida municipal corporation (the "City"), whose address is 10045-55 Overseas Highway, Marathon, Florida 33050, and American Underwater Contractors, Inc, a Florida corporation (the "Contractor"), whose address is 17536 S.E. Conch Bar Avenue, Tequesta, Florida 33469.

1. **Work.** Contractor shall provide all labor, materials, and equipment not already provided by the City for the installation of 39 moorings in Boot Key Harbor within the City (the "Work"). Contractor will be required to provide a jack-up barge or installation platform with hydraulic installation equipment capable of 5,000 pounds of rotational torque and 2,000 pounds of crowd pressure. Contractor shall also provide hydraulic testing equipment capable of testing vertical holding capacity of 15,000 pounds.

2. **Term.** The term of this Agreement shall be for 30 days from the date of execution, and may be extended for an additional 30 days at the sole option of the City Manager. The Contractor shall have 15 days to complete the Work from the Notice to Proceed is issued by the City Manager or his designee.

3. **Compensation.** City shall pay Contractor a total sum of \$12,466.00 for completion of the Work described in Section 1 of this Agreement. The City shall make payment on a final invoice forwarded by Contractor at the completion of the Work. No payments shall be due or payable for Work not performed or materials not furnished.

4. **Protection of Property and the Public.** Nothing in this Agreement will be construed to affect in any way the City's rights, privileges, and immunities, including the monetary limitations of liability set forth in Section 768.28 of the Florida Statutes. The provisions of this Section will survive the termination or expiration of this Agreement. Notwithstanding the foregoing, Contractor shall:

a. Take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.

b. Repair and/or replace landscaping, vegetation, walks, drives, or structures of the City and of any land adjoining any work sites, which are damaged by Contractor, its agents, employees, guests and invitees.

c. Protect all buildings, sidewalks, fences, shade trees, lawns and all other improvements from damage by Contractor. Property obstructions, including, but not limited to sewers, drains, water or gas lines, conduits, manholes, valve boxes, meter boxes, and street monuments shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items which include, but are not limited to manholes, valve boxes, meter boxes and street monuments prior to adjusting them to grade and shall be held strictly liable to the affected utility if any such appliances are disturbed, damaged or covered up during the course of the Work.

5. **Indemnification.**

a. In consideration of the entry of this Agreement and to the extent permitted by Chapter 725, Florida Statutes, the Contractor shall indemnify, protect, defend and hold harmless the City, its officers, agents and employees from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or resulting from the performance of Work under this Agreement, caused by any negligence, recklessness or intentionally wrongful conduct of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.

b. This indemnification obligation shall survive the termination of this Agreement.

c. The Contractor shall defend the City or provide for such defense, at the City's option. The Contractor shall immediately notify the City Manager in writing of any claims received by the Contractor.

d. The Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Agreement. Contractor shall secure and pay for all fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this Agreement for any reason, Contractor shall transfer permits, if any, and if allowed by law, to the City.

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e. To the extent this indemnification clause or any other clause in this Contract does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract shall hereby be interpreted as the parties' intention for the indemnification clauses to comply with Chapter 725, Florida Statutes, as may be amended.

6. **Compliance with Governmental Laws.** Contractor shall comply with all applicable federal, state, county, and municipal laws (including City laws), ordinances, resolutions and governmental rules, regulations and orders as may be in effect now or at any time which are applicable to Contractor, the Property or the operations conducted at the Property or the Premises.

7. **Contractor's Employees.** Contractor shall at all times be responsible for the conduct and performance of Contractor's employees.

8. **Vehicles and Equipment.** At all times throughout the Term of this Agreement, Contractor shall be responsible to provide any and all vehicles, machinery, tools, accessories, and other items necessary to perform the Work. All vehicles used by Contractor to provide services under this Agreement shall be licensed to operate in the State of Florida.

9. **Insurance.** Contractor shall provide and maintain in force, until all the Work to be performed under this Agreement has been completed and accepted by the City, with copies to each additional insured identified herein, Certificates of Insurance (and other evidence of insurance requested by City or any other additional insured) which Contractor is required to purchase and maintain, and shall require all subcontractors to carry:

a. Workers Compensation insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Jones Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and 00/100 Dollars (\$100,000.00) per accident. Contractor agrees to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

b. Comprehensive General Liability insurance to protect against bodily injury liability and property damage in an aggregate amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: Property and/or Operations; Independent Contractors; Products and/or Completed Operations Hazard; Explosion, Collapse and Underground Hazard Coverage; Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to that required for Bodily Injury Liability and Property Damage Liability; and Broad Form Contractual Coverage covering all liability arising out of the terms of this Agreement.

c. Business Automobile Liability insurance in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence combined single limit, for bodily injury and property damage liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: Owned, Non-owned and Hired vehicles.

d. The Contractor shall either require each of its subcontractors to produce and to maintain subcontractor's public liability and property damage insurance and vehicle liability insurance of the type and in the same amounts specified above or insure the activities of its subcontractors in the Contractor's own policies.

e. Contractor shall furnish to City certificates of insurance evidencing the insurance coverages specified by this section prior to the Effective Date. The required certificates of insurance shall name the type of policy provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement.

f. The required insurance coverage is not to cease and is to remain in full force throughout the Term of this Agreement. All policies must be endorsed to provide City with at least thirty (30) calendar days' notice of cancellation and/or restriction. If any of the insurance coverage will expire prior to the termination of this Agreement, copies of renewal policies shall be furnished at least sixty (60) calendar days' prior to the date of their expiration.

g. All deductibles must be declared by Contractor and must be approved by the City. At the City's sole and absolute discretion, Contractor shall (1) eliminate or reduce such deductible with respect to the City, or (2) procure a bond in a form satisfactory to the City.

h. City shall not be responsible for purchasing and maintaining any insurance to protect the interests of Contractor, subcontractors or others on the Work. City specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Section 768.28, Florida Statutes and Section 95.11, Florida Statutes.

10. **Assignment**. This Agreement shall not be assigned in whole or in part by either party.

11. **Governing law; Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In case of any dispute or litigation involving this Agreement, the parties hereof expressly agree that venue for any such proceeding will be exclusively in Miami-Dade County, Florida and no action or proceeding shall be brought in any other County.

12. **Third Parties**. Neither the Contractor nor City intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

13. **Attorney's fees**. In the event either party to this Agreement is required to retain legal counsel to enforce any of its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party together with court costs incurred in any litigation at any trial and appellate proceedings.

14. **Access to Public Records**. The Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes. Contractor shall retain all records associated with this Agreement for a period of three (3) years from the termination of this Agreement.

15. **Inspection and Audit**. During the Term of this Agreement, Contractor shall allow City representatives access during reasonable business hours to Contractor's records related to this Agreement for the purposes of inspection or audit of such records. If upon audit of such records, the City determines the Contractor was paid for services not performed, upon receipt of written demand by the City, the Contractor shall immediately remit such payments to the City.

16. **Severability**. If a term, provision, covenant, contract or condition of this Agreement is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this Agreement and the remainder shall be effective as though every term, provision, covenant, contract or condition had not been contained herein.

17. **Waiver of Jury Trial.** The Parties irrevocably and knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.

18. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

19. **Notices.** Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

FOR CONTRACTOR:

David Foster, President
American Underwater Contractors, Inc.
17536 S.E. Conch Bar Avenue
Tequesta, Florida 33469
Telephone: (561) 575-5538
Facsimile: (561) 575-4651

FOR CITY:

W. Scott Janke, City Manager
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033
Facsimile: (305) 743-3667

WITH COPY TO:

Nina Boniske, City Attorney
Weiss Serota Helfman Pastoriza Guedes Cole & Boniske, P.A.
2665 South Bayshore Drive, Suite 420
Miami, Florida 33133
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

[Acknowledgments on following page]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: CITY OF MARATHON, FLORIDA, signing by and through its Mayor, authorized to execute same by Council action on the 12th day of August, 2003, and American Underwater Contractors, signing by and through David Foster, duly authorized to execute same.

CITY

ATTEST:

[Signature]
City Clerk

CITY OF MARATHON, FLORIDA

By: [Signature]
City Manager

Dated: 9/2/03 2003.

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

By: [Signature]
City Attorney

CONTRACTOR

WITNESS

AMERICAN UNDERWATER CONTRACTORS, INC.

[Signature]
Print Name: Harry De losbennett
(Corporate Seal)
N/A

By: [Signature]
Print Name: DAVID FOSTER
Print Title: PRESIDENT

Dated: 9/2/03, 2003.