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**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-011**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH B.A.T. CONSTRUCTION, INC., FOR CONSTRUCTION OF THE EVENTS FIELD AT 98TH/99TH STREET IN AN AMOUNT NOT TO EXCEED \$1,448,968.80

WHEREAS, the City of Marathon, Florida (the "City") advertised an Invitation to Bid for the construction of the events field at 98th/99th Street; and

WHEREAS, three bids were received; and

WHEREAS, B.A.T. Construction, Inc., was the lowest responsible and responsive bidder.

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

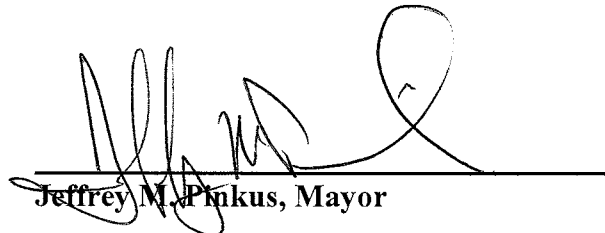
Section 1. The above recitals are true and correct and are incorporated herein.

Section 2. The agreement between the City of Marathon and B.A.T. Construction, Inc., for construction of the events field at 98th/99th Street in an amount not to exceed \$1,448,968.80 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.

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 25th day of January, 2005.

THE CITY OF MARATHON, FLORIDA


Jeffrey M. Pinkus, Mayor

AYES: Bartus, Bull, Mearns, Miller, Pinkus
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Cindy L. Ecklund
City Clerk

(City Seal)

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



CITY ATTORNEY

SECTION L

AGREEMENT

THIS AGREEMENT, made and entered into on this 18 day of JANUARY, ~~2004~~ ²⁰⁰⁵, by and between B.A.T. Construction Inc Party of the Contractor, and City of Marathon, hereafter "City":

WITNESSETH:

That, the Contractor, for the consideration hereinafter fully set out, hereby agrees with the City as follows:

1. That the Contractor shall furnish all the materials, and perform all of the work in manner and form for the Events Field Site, RE-BID # 10-2004-01A, as contained in as provided by the following enumerated Documents, Specifications and Drawings, which are attached hereto and made a part hereof, as if fully contained here:

- (A) Invitation to Bid
- (B) Instructions to Bidders
- (C) Bid
- (D) Bid Bond
- (E) Sworn Statement on Public Entity Crimes under Florida Statutes Chapter 287.133(3)(a)
- (F) Drug-Free Workplace Program
- (G) Indemnification Clause
- (H) Bidders Qualifications
- (I) References
- (J) Acknowledgement of Conformance with O.S.H.A. Standards
- (K) Trench Safety Act
- (L) Agreement
- (M) Payment Bond
- (N) Performance Bond
- (O) Notice of Award
- (P) Notice to Proceed
- (Q) Change Order
- (R) General Conditions
- (S) Specifications
Events Field Site Sheets

2. That the Contractor shall commence the work to be performed under this Agreement on a date to be specified in a written order of the City and shall complete all work hereunder within the length of time stipulated in the bid.

3. That the City hereby agrees to pay to the Contractor for the faithful performance of this Agreement, subject to additions and deductions as provided in the Specifications of Bid, in lawful money of the United States, the amount of:

One Million Four Hundred Forty Eight Thousand Nine Hundred Sixty Eight and ⁸⁰/₁₀₀
 (Written Dollar Amount)

dollars (\$ 1,448,968.80), based on the estimated quantities and Unit or Lump Sum Prices contained herein.

4. That the City shall make monthly partial payments to the Contractor on the basis of a duly certified and approved estimate of work performed during each calendar month by the Contractor, LESS the retainage provided in the General Conditions, which is to be withheld by the City until work within a particular part has been performed strictly in accordance with this Agreement and until such work has been accepted by the City.
5. That upon submission by the Contractor of evidence satisfactory to the City that all payrolls, material bills, and other costs incurred by the Contractor in connection with the construction of the work have been paid in full, final payment on account of this Agreement shall be made within sixty (60) days after the completion by the Contractor of all work covered by this Agreement and the acceptance of such work by the City.
6. Bidder agrees that the work shall be completed within one hundred twenty (120) calendar days after the date stipulated in the Notice to Proceed.
7. In the event that the Contractor shall fail to complete the work within the time limit or the extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid at the rate of Two Hundred and 00/100 Dollars (\$200.00) per day.
8. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Surety Bond hereto attached for its faithful performance and payment, the City shall deem the Surety or Sureties upon such bond to be unsatisfactory, or if, for any reason such bond ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense within five (5) days after the receipt of notice from the City so to do, furnish an additional bond or bonds in such form and amount and with such Surety or Sureties as shall be satisfactory to the City. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the City.
9. No additional work or extras shall be done unless the same shall be duly authorized by appropriate action by the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above written, in three (3) counterparts, each of which shall, without proof or accounting for the other counterpart be deemed an original Contract.

WITNESSES:

[Signature]
[Signature]

CONTRACTOR: B.A.T. Constructors Inc

BY: [Signature]
NAME: Phillip Braeunig
TITLE: Vice President

OWNER: CITY OF MARATHON

BY: [Signature]
NAME: Jeffrey M. Pinkis
TITLE: Mayor

ATTEST:

BY: [Signature]
NAME: Cindy C. Ecklund
TITLE: CITY CLERK

APPROVED AS TO FORM:

BY: [Signature]
NAME: John R. Hamrick
TITLE: CITY ATTORNEY