

**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-111**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTINUING SERVICES AGREEMENTS WITH BECKS DISASTER RELIEF AND SOLID RESOURCES ENVIRONMENTAL AND EMERGENCY SERVICES FOR STORM DEBRIS REMOVAL MONITORING; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, at the request of the Federal Emergency Management Agency (“FEMA”), the City of Marathon (the “City”) issued a request for proposals for storm debris removal monitoring; and

WHEREAS, the direction of this RFP was to better comply with FEMA requirements and to establish a primary contractor as well as a secondary, or backup, contractor; and

WHEREAS, during the recovery and mitigation phases of emergencies it is beneficial for the City to have the ability to use more than one contractor; and

WHEREAS, the primary contractor chosen is Becks Disaster Relief and the secondary contractor chosen is Solid Resources Environmental and Emergency Services for storm debris removal monitoring;

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

Section 1. The City Council hereby approves the Continuing Services Agreements with Becks Disaster Relief and Solid Resources Environmental and Emergency Services for Storm Debris Removal monitoring, attached hereto as Exhibits A and B respectively, with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

Section 2. The City Manager is authorized to execute these agreements.

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 28th day of August 2007.

THE CITY OF MARATHON, FLORIDA



Christopher M. Bull, Mayor

AYES: Cinque, Tempest, Vasil, Worthington, Bull
NOES: None
ABSENT: None
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

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
BECK DISASTER RECOVERY INC.**

THIS AGREEMENT is made as of this 16th day of October, 2007, by and between **BECK DISASTER RECOVERY INC.**, a Florida corporation, (hereinafter the “Supplier”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the Supplier and City, through mutual negotiation, have agreed upon a scope of services, and fees for debris removal monitoring services as described below (the “Project”); and

WHEREAS, the City desires to engage the Supplier to perform the services specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Supplier and the City agree as follows.

1. **Scope of Services/Deliverables.**

1.1 The Supplier shall perform contract monitoring of debris removal operations and provide technical assistance to the City on FEMA and FHWA disaster recovery reimbursement program compliance on an as needed basis upon request from the City. The City shall not be prevented in any manner from retaining other firms to complete such services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Supplier.

2. **Term/Commencement Date.**

2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through October 1, 2009, with options for two (2) additional one (1) year renewals; unless earlier terminated in accordance with Paragraph 7 hereof.

2.2 Supplier agrees that time is of the essence and Supplier shall complete each deliverable for the Project within the timeframes set forth in any request for disaster related monitoring services from the City, unless extended in writing by the City Manager.

3. **Compensation and Payment.**

- 3.1 The Supplier shall be compensated in accordance with the rates set forth on Exhibit A attached hereto.
- 3.2 The Supplier may invoice the City on either a time and materials or fixed basis (at the completion of stated deliverables). The payment method shall be specified in individual task orders and/or Notice to Proceed from the City.
- 3.3 The City shall pay Supplier in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Supplier the undisputed portion of the invoice. Upon written request of the Finance Director, the Supplier shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **Subcontractors.**

- 4.1 The Supplier shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Project.
- 4.2 Any subcontractors used on the Project must have the prior written approval of the City Manager.

5. **City's Responsibilities**

- 5.1 The City shall furnish to Supplier, at the Supplier's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Supplier, in possession of the City.
- 5.2 The City shall arrange for access to and make all provisions for Supplier to enter upon real property as required for Supplier to perform services as may be requested in writing by the Supplier.

6. **Supplier's Responsibilities**

- 6.1 If at any time during the term of this Agreement, it is determined that the Supplier's deliverables are incorrect, defective or fail to conform to the Scope of Services of the Project, upon written notification from the City Manager, the Supplier shall at Supplier's sole expense, immediately correct the work.

7. **Termination.**

- 7.1 The City Manager without cause may terminate this Agreement upon thirty (30) days prior written notice to the Supplier, or immediately with cause.
- 7.2 Upon receipt of the City's written notice of termination, Supplier shall stop work on the Project unless directed otherwise by the City Manager.
- 7.3 In the event of termination by the City, the Supplier shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Supplier has first complied with the provisions of Paragraph 7.4.
- 7.4 The Supplier shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Project to the City, in a hard copy and electronic format within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

8. **Insurance.**

The Supplier shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City Manager. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverages shall include a minimum of:

- 8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.
- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$100,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

8.4 Professional Liability: The Supplier shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.

8.5 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

During the term of this Agreement, Supplier shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and agrees to abide by all Federal and State laws regarding nondiscrimination

10. **Attorneys Fees and Waiver of Jury Trial.**

10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

11.1 Supplier shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages to the extent arising out of, related to, or any way connected with Supplier's negligent performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Supplier and third parties made pursuant to this Agreement. The Prevailing Party shall reimburse the other party for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Supplier's performance or non-performance of this Agreement.

11.2 The provisions of this Section 11 shall survive termination of this Agreement.

12. **Notices/Authorized Representatives.**

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Michael H. Puto, City Manager
City of Marathon, Florida
10045-55 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

With a Copy To: Jimmy Morales, City Attorney
Stearns Weaver Miller Weissler Alhadeff & Sitterson, PA
150 W. Flagler Street, Suite 2200
Miami, FL 33130
(305) 789-3532

For The Supplier: Jonathan J. Burgiel, CEO
Beck Disaster Recovery, Inc.
800 N. Magnolia Ave. Suite 400
Orlando, FL 32803
(407) 803-5700

13. **Governing Law.**

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court of the State of Florida or the United States District Court for the Southern District of Florida.

14. **Entire Agreement/Modification/Amendment.**

14.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

14.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

15. **Ownership and Access to Records and Audits.**

15.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Supplier providing services to the City under this Agreement shall be the property of the City; provided, however, (a) Supplier is granted an unrestricted license to retain copies and use all Work Products, (b) the City's use shall be limited to the intended use for which the Work Products are provided under this Agreement and the Work Products shall not be changed without the prior written approval of Supplier, and (c) Supplier shall retain ownership of its intellectual property including the procedures, processes, internal resources, tools and other means used by Supplier to prepare the Work Products. Further, if the City releases the Work Products to a third party without Supplier's written consent (other than as intended hereunder), or changes or uses the Work Products other than as intended hereunder, the City does so at its sole risk and discretion and Supplier shall not be liable for any claims or damages resulting from or connected with the release or any third party's use of the Work Products.

15.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Supplier involving transactions related to this Agreement.

15.3 The City may cancel this Agreement for refusal by the Supplier to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

16. **Nonassignability.**

This Agreement shall not be assignable by Supplier unless such assignment is first approved in writing by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Supplier, and such firm's familiarity with the City's area, circumstances and desires.

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Supplier and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Supplier shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

20. **Waiver**

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

21. **Survival of Provisions**

Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

22. **Prohibition Of Contingency Fees.**

The Supplier warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Supplier, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Supplier, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

23. **Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original and each such counterpart shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same, and by the Supplier, signing by and through its President, whose representative has been duly authorized to execute same.

Attest:

CITY OF MARATHON

Diane Clavier
Diane Clavier, City Clerk

By: Michael H. Puto
Michael H. Puto, City Manager

Date: 8/30/07

Approved by City Attorney
for legal sufficiency for City
use only:

[Signature]
City Attorney

SUPPLIER

By: Charles M. McLendon
Charles M. McLendon

Date: October 17, 2007

EXHIBIT A

Rates

7. Price Proposal

BDR's labor rates for disaster monitoring and management services requested by the City are provided below. Project related expenses (non-labor related) will be invoiced at the time the expenses are incurred and will be billed at cost, without mark-up. Mileage will be reimbursed at the federally approved rate.

Hourly Labor Rates for Disaster Debris Monitoring Services*

Title/Role	Hourly Billing Rate
Project Manager	\$115.00
Data Manager	\$95.00
Damage Assessment Estimator	\$85.00
Operations Manager	\$80.00
Scheduling/Routing Managers	\$69.00
GIS Operator	\$65.00
Field Supervisor	\$65.00
Disposal Site Monitor	\$52.00
Collection Monitor	\$47.00
Citizen Drop-off Site Monitor	\$47.00
Billing/Invoicing Analysts	\$35.00
Load Ticket Data Entry Clerk	\$35.00
Project Assistant	\$35.00

* Rates are subject to annual adjustments on the anniversary date of the contract in accordance with the U.S. Consumer Price Index.

Optional Fees/Rates

Automated/Electronic Ticketing System

BDR is in the process of developing an automated, paperless ticketing technology that utilizes smart cards to store and manage ticket data. Use of this system significantly reduces manual data entry efforts and speeds daily reporting. To the extent the City and BDR mutually agrees on the use of this new system (as opposed to traditional manual load tickets), BDR is proposing to charge the City an additional \$0.75 per collection and disposal/tower monitor hour charged. This additional fee is necessary to pay for the cost of field handheld units (several hundred of which will likely be required).

Optional Preparedness, Response, Recovery & Public Assistance Services

To the extent the City requests BDR's assistance for any of the optional services listed in Item 6 above, BDR's standard consulting billing rates would apply. The fees for these services can be provided to the City on a fixed fee or time and materials basis (or other mutually agreed upon compensation structure).

8. Current Contracts

BDR has extensive experience in managing multiple disaster events simultaneously. This experience ensures the City a safe and quick response and allows the City to restore its normal operations as quickly as possible. The following is a list of ongoing contracts for which BDR has been providing similar services to those requested by the City of Marathon.

Florida Debris Monitoring Contract Listing

Florida Panhandle	Central Florida	South Florida
<ul style="list-style-type: none"> ▪ City of Pensacola ▪ Santa Rosa County ▪ Leon County ▪ Wakulla County 	<ul style="list-style-type: none"> ▪ Lake County ▪ Seminole County ▪ Polk County ▪ City of Orlando ▪ City of Cocoa ▪ City of Daytona Beach ▪ City of Palm Bay ▪ City of Tampa ▪ Volusia County 	<ul style="list-style-type: none"> ▪ Collier County ▪ Sarasota County ▪ Charlotte County ▪ City of Plantation ▪ City of Ft. Lauderdale ▪ City of Tamarac

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
SOLID RESOURCES ENVIRONMENTAL AND EMERGENCY SERVICES**

THIS AGREEMENT is made as of this 28 day of August, 2007, by and between **SOLID RESOURCES ENVIRONMENTAL AND EMERGENCY SERVICES**, a Florida corporation, (hereinafter the "Supplier"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the Supplier and City, through mutual negotiation, have agreed upon a scope of services, and fees for debris removal monitoring services as described below (the "Project"); and

WHEREAS, the City desires to engage the Supplier to perform the services specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Supplier and the City agree as follows.

1. **Scope of Services/Deliverables.**

1.1 The Supplier shall perform contract monitoring of debris removal operations and provide technical assistance to the City on FEMA and FHWA disaster recovery reimbursement program compliance on an as needed basis upon request from the City. The City shall not be prevented in any manner from retaining other firms to complete such services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Supplier.

2. **Term/Commencement Date.**

2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through October 1, 2009, with options for two (2) additional one (1) year renewals; unless earlier terminated in accordance with Paragraph 7 hereof.

2.2 Supplier agrees that time is of the essence and Supplier shall complete each deliverable for the Project within the timeframes set forth in any request for disaster related monitoring services from the City, unless extended in writing by the City Manager.

3. **Compensation and Payment.**

- 3.1 The Supplier shall be compensated in accordance with the rates set forth on Exhibit A attached hereto.
- 3.2 The Supplier shall invoice the City upon the completion of each task or deliverable in accordance with the Project Schedule or on a monthly basis if the Project Schedule does not otherwise specify.
- 3.3 The City shall pay Supplier in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Supplier the undisputed portion of the invoice. Upon written request of the Finance Director, the Supplier shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **Subcontractors.**

- 4.1 The Supplier shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Project.
- 4.2 Any subcontractors used on the Project must have the prior written approval of the City Manager.

5. **City's Responsibilities**

- 5.1 The City shall furnish to Supplier, at the Supplier's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Supplier, in possession of the City.
- 5.2 The City shall arrange for access to and make all provisions for Supplier to enter upon real property as required for Supplier to perform services as may be requested in writing by the Supplier.

6. **Supplier's Responsibilities**

- 6.1 The Supplier shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a professional real estate appraiser under similar circumstances. If at any time during the term of this Agreement, it is determined that the Supplier's deliverables are incorrect, defective or fail to conform to the Scope of Services of the Project, upon written notification from the City Manager, the Supplier shall at Supplier's sole expense, immediately correct the work.

7. **Termination.**

- 7.1 The City Manager without cause may terminate this Agreement upon thirty (30) days prior written notice to the Supplier, or immediately with cause.
- 7.2 Upon receipt of the City's written notice of termination, Supplier shall stop work on the Project unless directed otherwise by the City Manager.
- 7.3 In the event of termination by the City, the Supplier shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Supplier has first complied with the provisions of Paragraph 7.4.
- 7.4 The Supplier shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Project to the City, in a hard copy and electronic format within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

8. **Insurance.**

The Supplier shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City Manager. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverages shall include a minimum of:

- 8.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.
- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$100,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 8.3 Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

8.4 Professional Liability: The Supplier shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.

8.5 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

9. **Nondiscrimination.**

During the term of this Agreement, Supplier shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and agrees to abide by all Federal and State laws regarding nondiscrimination

10. **Attorneys Fees and Waiver of Jury Trial.**

10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

11.1 Supplier shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Supplier's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Supplier and third parties made pursuant to this Agreement. Supplier shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Supplier's performance or non-performance of this Agreement.

11.2 The provisions of this Section 11 shall survive termination of this Agreement.

12. **Notices/Authorized Representatives.**

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Michael H. Puto, City Manager
City of Marathon, Florida
10045-55 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

With a Copy To: Jimmy Morales, City Attorney
Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson PA
150 W. Flagler Suite 220
Miami, FL 33130
(305) 789-3427

For The Supplier: Michelle Harvey, President
Solid Resources Environmental and Emergency Services
2201 Cantu Court, Suite 119
Sarasota, FL 3432
(941) 379-8100

13. **Governing Law.**

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court of the State of Florida or the United States District Court for the Southern District of Florida.

14. **Entire Agreement/Modification/Amendment.**

14.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

14.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

15. **Ownership and Access to Records and Audits.**

- 15.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Supplier providing services to the City under this Agreement shall be the property of the City.
- 15.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Supplier involving transactions related to this Agreement.
- 15.3 The City may cancel this Agreement for refusal by the Supplier to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

16. **Nonassignability.**

This Agreement shall not be assignable by Supplier unless such assignment is first approved in writing by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Supplier, and such firm's familiarity with the City's area, circumstances and desires.

17. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

The Supplier and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

The Supplier shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

20. **Waiver**

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

21. **Survival of Provisions**

Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

22. **Prohibition Of Contingency Fees.**

The Supplier warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Supplier, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Supplier, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

23. **Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original and each such counterpart shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same, and by the Supplier, signing by and through its _____, whose representative has been duly authorized to execute same.

Attest:

CITY OF MARATHON

Diane Clavier
Diane Clavier, City Clerk

By: *Michael H. Puto*
Michael H. Puto, City Manager

Date: *8/30/07*

Approved by City Attorney
for legal sufficiency for City
use only:

[Signature]
City Attorney

SUPPLIER

By: *[Signature]*

Date: *9/13/07*

EXHIBIT A

Rates

CITY OF MARATHON

**Monitoring of Disaster Generated Debris
Management and Technical Assistance
RFP 042607001-0-2007/DC**

Price Proposal

Personnel Type	Hourly Rate
Project Manager/Principal-in-Charge	\$120
Deputy Project Manager	\$100
Field Supervisor/Operations Manager	\$ 65
Scheduling/Routing Managers	\$ 45
GIS Operator	\$ 80
Disposal Site Monitor	\$ 40
Collection Monitor	\$ 40
Citizen Drop-off Site Monitor	\$ 40
Billing/Invoicing/Data Manager	\$ 60
Load Ticket Data Entry Clerk	\$ 35
Call Center Operator	\$ 35

Regular Hourly Rates – Above hourly rates include general company overhead (e.g., postage and shipping, computer charges, etc.).

Other Direct Costs – Employees are eligible for lodging, transportation and per diem and are invoiced at a rate not to exceed the State of Florida rates without markup. In some cases, these costs are eligible for reimbursement through federal emergency recovery funding programs.

Application and Permit Fees – All application, filing, and permit fees, including, without limitation, all fees to local, regional, county, state and federal governments and agencies, shall be paid by the Client directly to the appropriate agency at the required time or reimbursed at actual cost.

Signed: *Michelle Harvey*

Date: May 24, 2007

By: M Michelle Harvey
Title: President