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**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-22**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ACQUATEK, LLC FOR MOORING FIELD BUOY INSPECTIONS IN THE AMOUNT NOT TO EXCEED \$43,776.

WHEREAS, the City has issued a request for proposals for a scope of services and schedule for Mooring Inspections; and

WHEREAS, the City of Marathon owns 64 mooring units and intends to install 164 additional mooring units in Boot Key Harbor, Marathon, Florida Keys, for the purpose of mooring recreational boats in a mooring field on City Harbor bay bottom. The 164 additional mooring units over leased submersed land are projected to be installed during the first and/or second quarter of 2007; and

WHEREAS, the moorings are managed by the City and require quarterly inspections per the Boot Key Harbor City Marina Management Plan to insure functional integrity and safety.

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 authorizes the City Manager to enter into an Agreement (attached as exhibit A) with Acquatek LLC for quarterly Mooring Buoy Inspections.

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 13th day of February, 2007.

THE CITY OF MARATHON, FLORIDA


Christopher M. Bull, Mayor

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

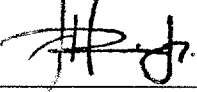
ATTEST:



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
ACQUA-TEK LLC**

THIS AGREEMENT is made between **ACQUA-TEK LLC**, a Florida Limited Liability Company, (hereinafter the “Contractor”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the Contractor and City, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for inspection of Boot Key Harbor Mooring Field (the “Project”).

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

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

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

- 1.01 The City of Marathon owns 64 mooring units and intends to install 164 additional mooring units in Boot Key Harbor, Marathon, Florida Keys, for the purpose of mooring recreational boats in a mooring field on City and State Harbor bottom. The 164 additional mooring units over leased submerged land are projected to be installed during the first and/or second quarter of 2007. The moorings are managed by the City and require quarterly inspections to insure functional integrity and safety. The contractor shall conduct the mooring inspections with reports and videotape on a quarterly basis pursuant to the project schedule attached hereto.
- 1.02 If wear or problems of any kind (except replacement of seizing wire or approved seizing material on hardware) are detected that will require remedial action on the mooring, then any additional work will be add-on negotiated for time and materials. All diving activity and practices are to comply with the Association of Diving Consensus Standards and any required government safety regulations. The diving business must be insured for a minimum liability coverage including completed operations insurance of one (1) million dollars and an aggregate of one (1) million dollars. The policy shall include the City as an additional insured.
- 1.03 The “Scope of Services” includes a Project Schedule for the Project which includes a breakdown of tasks, timeline and deliverables to the City. Additional work to correct any found deficiency will be paid as added time and materials.

2. Specifications

- Clean and check all shackles, swivels, and boltheads/nuts for wear and condition. Measure the current thickness relative to the as constructed measurement with a caliper for detection of wear or alloy corrosion.
- Light clean (no abrasion) and check all down-line and pennant components for wear or chafe. This is to involve no scrubbing of the line which could damage fiber.
- Clean and check all seizing material / wire for wear or electrolytic loss and replace as necessary.
- Clean and check all chaffing hose for abnormal wear or deterioration that will expose the protected main line underneath.
- Clean and check the main buoy and inspect line at location where it runs through the buoy for chafe or wear. Inspect lettering and numbering on buoy for wear or non-adhesion.
- Light clean (no abrasion) and check each line splice for integrity. All eye splices must have a minimum of four (4) complete tucks.
- Clean and inspect the underwater mid-float to detect cracks, splits, or deterioration. Check for correct position alignment on down-line system. If crabs have eaten holes in the buoy, slide down the buoy and inspect the line for fiber cuts. Photograph all such incidents.
- Check the area around the anchor head on the bottom to detect any objects that would cause damage to or wear on any components of the system. Inspect the shaft that may be exposed above the mud line for any wear or deterioration and measure relative thickness with a caliper gauge.
- Upon the detection of wear or material loss on any component of greater than 10% of the original material thickness, the entire unit (removed from the anchor head) will be removed and replaced by a unit with integrity. A tag line will be made up with a length equal to the average depth of the water to connect the moored boat directly to the head by wrapping and tying off under the lip of the head. This will enable work to be done or swapping out system without moving the boat. Weather will be considered, as well as time required for the work. The Ports Manager will be responsible for the decision on whether or not to remove the boat during work.
- Videotape each mooring system unit from top to bottom beginning with the buoy number and progressing down-line to the anchor head showing bolthead and nut individually on the head. Speed of the photography must be appropriate for ease in final examination and analysis on a monitor. Videotape may be either color or black and white. DVD or CD must be used for submission to the City of Marathon. Separate DVDs or CDs must be submitted for the 64 moorings over City-owned submerged land and for the 164 moorings over leased submerged land.
- CDs or DVDs of the 64 and 164 units will become the property of the City of Marathon. There is to be no editing of the deliverable and the photographer must sign, date, and list the buoys involved in the photography. The accompanying divers and business/company owner are also to sign and date the CDs or DVDs attesting to its authenticity.
- A component checklist is to be made for each inspection and labeled by the buoy number for the moorings over City-owned submerged land and a separate checklist for the moorings over leased submerged land. These checklists will be typed and become a deliverable of the contract. It will be certified correct, dated, and signed by the diver and owner of the business/company.

- The inspection and all required deliverables are to be completed within one month of the notice of commencement issued by the Ports Manager. Items for repair or replacement will be negotiated separately and may be cause for adjustment of time schedule.
- All deliverables and separate invoices for the 64 moorings over City-owned submerged land and a separate invoice for the 164 moorings over leased submerged land are to be addressed to the City of Marathon, Attn: Ports Manager, 800 35th Street Ocean - Marathon, FL 33050, or hand delivered to this address.

3. **Term/Commencement Date.**

- 3.1 This Agreement shall become effective upon execution, by both parties and shall remain in effect through February 1, 2008, unless earlier terminated in accordance with Section 8 or extended in accordance with paragraph 3.2.
- 3.2 The City may, at its sole option, extend this Agreement for an additional term of two, one (1) year extensions, and may include an increase in compensation with the extensions of up to four percent or the annual cost of living (COLA) increase; whichever is less. Such extensions shall be effective upon receipt of a written notice from the City Manager to the Contractor.
- 3.3 The Contractor agrees that time is of the essence and the Contractor shall complete each deliverable for the Project within the timeframes set forth in the Project Schedule, unless extended by the City Manager.

4. **Compensation and Payment.**

- 4.1 The Contractor shall be compensated at the following rates: Inspection at a rate of \$48 per mooring, per quarter, for four quarters for up to 228 moorings. Additional work will be paid after approval by the Ports Manager for material and for time, not to exceed \$75 per man hour for time.
- 4.2 The Contractor shall invoice the City upon the completion of each task or deliverable in accordance with the Project Schedule or on a quarterly basis if the Project Schedule does not otherwise specify.
- 4.3 The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- 4.4 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Contractor the undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

5. **Subcontractors**

- 5.1 The Contractor shall be responsible for all payments to any sub Contractors and shall maintain responsibility for all work related to the Project.
- 5.2 Any sub Contractors used on the Project must have the prior written approval of the City Manager.

6. **City's Responsibilities**

- 6.1 Furnish to the Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by the Contractor, in possession of the City.
- 6.2 Arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to perform services as may be requested in writing by the Contractor.

7. **Contractor's Responsibilities**

- 7.1 The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Project, it is determined that the Contractor'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 Contractor shall at Contractor's sole expense, immediately correct the work.

8. **Conflict of Interest.**

- 8.1 To avoid any conflict of interest or any appearance thereof, the Contractor shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to any adversarial planning issues in the City. For the purposes of this section "adversarial" shall mean any development application where staff is recommending denial or denied the application,; administrative appeal or court action wherein the City is a party.

9. **Termination.**

- 9.1 The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Contractor, or immediately with cause.
- 9.2 Upon receipt of the City's written notice of termination, Contractor shall stop work on the Project unless directed otherwise by the City Manager.
- 9.3 In the event of termination by the City, the Contractor shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Contractor has first complied with the provisions of Paragraph 8.4.

9.4 The Contractor 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.

10. **Insurance.**

10.1 The Contractor 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:

10.2 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. Contractors with Worker's Compensation exemption shall not hold City liable for employee injury or claims.

10.3 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$100,000.00 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.

10.4 Boat / Vessel Liability Insurance. Boat / vessel liability insurance coverage with limits of liability of not less than \$500,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned boat/vessels, all non-owned boat/vessels, and all hired boat/vessels.

10.5 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

10.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Certificates of Insurance shall include the City as additional insured or certificate holder. 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.

11. **Nondiscrimination.**

11.1 During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex,

or national origin, and to abide by all Federal and State laws regarding nondiscrimination

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

12.1 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.

12.2 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.

13. **Indemnification.**

13.1 Contractor 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 Contractor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorney's 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 Contractor's performance or non-performance of this Agreement.

13.2 The provisions of this section shall survive termination of this Agreement.

14. **Notices/Authorized Representatives.**

14.1 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: Mike Puto, City Manager
City of Marathon, Florida
10045-55 Overseas Highway
Marathon, Florida 33050

John Herin, City Attorney
Museum Tower
150 W. Flagler St. Suite 2200
Miami, FL 33130

For The Contractor: David Russell, President
Acqua-Tec LLC
800 – 35th Street Ocean
Marathon, FL 33050

15. **Governing Law.**

15.1 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 or the Southern District of Florida.

16. **Entire Agreement/Modification/Amendment.**

16.1 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.

16.2 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.

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

17.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Contractor providing services to the City under this Agreement shall be the property of the City.

17.2 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 Contractor involving transactions related to this Agreement.

17.3 The City may cancel this Agreement for refusal by the Contractor 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.

18. **Nonassignability.**

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

19. **Severability.**

19.1 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.

20. **Independent Contractor.**

20.1 The Contractor and its employees, volunteers and agents shall be and remain independent contractor 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.

21. **Compliance with Laws.**

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

22. **Waiver**

22.1 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.

23. **Survival of Provisions**

23.1 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.

24. **Prohibition of Contingency Fees.**

24.1 The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, 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 Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

25. **Counterparts**

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

IN WITNESS WHEREOF, the parties 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 Contractor 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 Huto
Michael H. Puto, City Manager

Date: 2/14/07

Approved by City Attorney
For legal sufficiency for City
Use only:

[Signature]

CONTRACTOR
Acqua-Tek LLC

By: David Russell
David Russell, President

Date: 2-13-07

Project Schedule

<u>Schedule</u>	<u>Commence</u>	<u>Due Deliverables</u>
March Inspection	within 30 days of execution of agreement	within 30 days of commencement
June Inspection	June 1	June 30, 2007
September Inspection	September 1	September 30, 2007
December Inspection	December 1	December 30, 2007

Upon the detection of wear or material loss on any component of greater than 10% of the original as-built material thickness, the Ports Manager must be immediately notified.

The Ports Manager, or designee, will be responsible for the decision on whether or not to remove the moored vessel during work.

DVD video photograph each mooring system unit from top to bottom beginning with the buoy number and progressing down-line to the anchor head showing bolt head and nut individually on the head. Speed of the photography must be appropriate for ease in the Ports Manager's final examination and analysis on a monitor. Video may be either color or black and white, color is preferred.

A DVD of the 64 units will become the property of the City of Marathon. There is to be no editing of the deliverable and the photographer must sign, date, and list the buoys involved in the photography. The accompanying divers and business/company owner are also to sign the tape cassette label attesting to its authenticity.

A component checklist is to be made for each mooring inspection and labeled by the buoy number. This checklist will be typed and become a deliverable of the contract. It will be a certified correct, dated, and signed by the diver and owner of the business/company.

The inspection and all required deliverables are to be completed within one month of the notice of commencement issued by the Ports Manager. Items for repair or replacement will be negotiated separately.

All deliverables and invoices are to be addressed to the

City of Marathon, Attn: Ports Manager,
800 – 35th Street Ocean, Marathon, FL 33050
or hand delivered to this address.