

Sponsored by: Burnett

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2008-133**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING CERTAIN PURCHASES IN EXCESS OF \$10,000 AND LESS THAN \$25,000 AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, pursuant to Resolution 2003-134, the City Council of the City of Marathon, Florida (the “City”), adopted Purchasing Policies and Procedures after determining that it was fiscally prudent and in the best interests of the City’s residents for the City to adopt policies and procedures for City employees and officials regarding the purchasing and acquisition of contractual services, equipment, goods, professional services and other similar types of services; and

**WHEREAS**, pursuant to Resolution 2007-156, the City Council amended the Purchasing Policies and Procedures to provide that any purchases over \$10,000 and less than \$25,000 must be placed on a City Council agenda as a consent item for approval prior to execution of the contract or consummation of the purchase; and


**WHEREAS**, staff wishes to bring those items set forth on Exhibit A attached hereto before City Council as a consent item;

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

- Section 1.** The City Council hereby approves the purchases set forth on Exhibit A hereto.
- Section 2.** The City Manager is authorized to execute any agreements in connection with these purchases.
- 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 26<sup>th</sup> day of August, 2008

**THE CITY OF MARATHON, FLORIDA**

  
Edward P. Worthington, Mayor


AYES: Bull, Cinque, Tempest, Vasil, Worthington  
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  
SYNAGRO TECHNOLOGIES, INC.**

**THIS AGREEMENT** is made between **SYNAGRO TECHNOLOGIES, INC.**, a Florida corporation, (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 water quality monitoring within Boot Key Harbor; and

**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.**

- 1.1 The Contractor shall furnish water quality monitoring services to the City as set forth in the Scope of Services for the Project as specified in Exhibit “A,” attached to this Agreement.
- 1.2 The "Scope of Services" includes a Project Schedule for the Project which includes a breakdown of tasks and a timeline for water quality monitoring services to the City.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through August 1, 2010 unless earlier terminated in accordance with Paragraph 8. The City Manager may extend the term of this Agreement up to an additional two (2) years by written notice to the Contractor.
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in the Project Schedule, unless extended by the City Manager.

3. **Compensation and Payment.**

- 3.1 The Contractor shall be compensated at the following rate: \$1,902.50 per quarter, totaling \$7,610.00 annually

- 3.2 The Contractor shall invoice the City on a quarterly basis upon the completion of each task or deliverable in accordance with the Project Schedule.
- 3.3 The City shall pay Contractor in accordance with the Florida Prompt Payment Act.

4. **Subcontractors.**

- 4.1 The Contractor 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 Furnish to 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 Contractor, in possession of the City.
- 5.2 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.

6. **Contractor's Responsibilities**

- 6.1 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 contractor 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.

7. **Conflict of Interest.**

7.1 To avoid any conflict of interest or any appearance thereof, 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.

8. **Termination.**

8.1 The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Contractor, or immediately with cause.

8.2 Upon receipt of the City's written notice of termination, Contractor shall stop work on the Project unless directed otherwise by the City Manager.

8.3 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.

8.4 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.

9. **Insurance.**

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 coverage shall include a minimum of:

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

- 9.2 Boat / Vessel Liability Insurance. Boat / vessel liability insurance coverage with limits of liability of not less than \$500,000 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.
- 9.3 Commercial General Liability. 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.
- 9.4 Professional Liability: The Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 9.5 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.

10. **Nondiscrimination.**

- 10.1 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

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

- 11.1 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.
- 11.2 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.

12. **Indemnification.**

- 12.1 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 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 Contractor's performance or non-performance of this Agreement.

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

13. **Notices/Authorized Representatives.**

13.1 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: Clyde Burnett, City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to: Jimmy Morales  
Stearns Weaver Miller  
Weissler Alhadeff & Sitterson, P.A.  
150 W. Flagler St., Ste. 2200  
Miami, FL 33130

For The Contractor: Synagro Technologies, Inc.  
5198 Overseas Highway  
Marathon, FL 33050

14. **Governing Law.**

14.1 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.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supersedes 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.

15.2 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.

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

16.1 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.

16.2 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.

16.3 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.

17. **Nonassignability.**

17.1 This Agreement shall not be assignable by Contractor unless such assignment is first approved by the City Manager. 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.

18. **Severability.**

18.1 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.



19. **Independent Contractor.**

19.1 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.

20. **Compliance with Laws.**

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

21. **Waiver**

21.1 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.

22. **Survival of Provisions**

22.1 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.

23. **Prohibition Of Contingency Fees.**

23.1 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.

24. **Counterparts**

24.1 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 SR Project Manager whose representative has been duly authorized to execute same.

Attest:

Diane Clavier  
Diane Clavier, City Clerk

CITY OF MARATHON

By: Clyde Burnett  
Clyde Burnett, City Manager

Date: 8/27/08

CONTRACTOR

By: David L. Evans  
DAVID L. EVANS

Date: 9-2-08

EXHIBIT "A"

**SCOPE OF SERVICES**

**Water Quality Sampling and Analysis Requirements for  
the City of Marathon**

*Laboratory and Personnel*

1. To assure that chemical, physical, biological, and microbiological data are appropriate and reliable, and are collected and analyzed by scientifically sound procedures the laboratory and personnel shall comply with Florida Administrative Code (F.A.C.) Chapter 62-160 QUALITY ASSURANCE for all monitoring performed.
2. The Laboratory performing the analysis shall comply with Florida Administrative Code (F.A.C.), Chapter 64E-1 CERTIFICATION OF ENVIRONMENTAL TESTING LABORATORIES.
3. The Laboratory and Personnel shall maintain a \$1,000,000 Professional Liability Policy.
4. The Laboratory and Personnel shall provide their own boat for in situ analysis as well as sample collection at the pre determined sample sites. The Laboratory and Personnel shall provide their own courier service for transport of field samples to the laboratory for analysis.

Exhibit "A" cont.

**WATER QUALITY MONITORING PLAN  
FOR  
BOOT KEY HARBOR.**

**Monitoring Schedule.**

This project requires quarterly analysis of specified water quality parameters within the water column and annual analysis at eight (8) sampling locations of specified parameters in marine sediment and within the water column they are as follows:

**Quarterly Analysis**

1. Conductivity
2. Chlorophyll a
3. Dissolved Oxygen
4. Enterococci
5. Fecal Coliform
6. Nutrients (Total Nitrogen/Total Phosphorous)
7. pH
8. Salinity
9. Temperature
10. Turbidity

**Annual Analysis**

1. Heavy Metals (Aluminum, Arsenic, Cadmium, Chromium, Copper, Lead, Zinc.)
2. Petroleum Hydrocarbons (PAH's)

**Parameters to be analyzed at three (3) different depths (1' below surface, mid-depth, 1' above bottom) within water column per station quarterly are:**

1. Conductivity
2. Dissolved Oxygen
3. pH
4. Salinity
5. Temperature
6. Turbidity

**Parameters to be analyzed at one depth (Subsurface) within water column quarterly are:**

1. Chlorophyll a
2. Enterococci
3. Fecal Coliform

*Exhibit "A" cont.*

4. Nutrients (Total Nitrogen/Total Phosphorous)

**Parameter to be analyzed at one depth (*Subsurface*) within the water column annually is:**

1. Petroleum Hydrocarbons (PAH's)

**Parameters to be analyzed at a specific depth within the marine sediment (*Top 2 cm.*) are:**

1. Heavy Metals (Aluminum, Arsenic, Cadmium, Chromium, Copper, Lead, Zinc.)

**Total number of parameters to be analyzed at each sampling station quarterly are:**

1. Ten (10) parameters per sampling station for a combined total of eighty (80) analysis for all eight sampling stations.

**Total number of parameters to be analyzed at each sampling station annually are:**

1. Two (2) parameters per sampling station for a combined total of sixteen (16) analysis for all eight sampling stations.

**GPS Sampling Locations:**

1. 24° 41' 45"/81° 07' 26"
2. 24° 42' 44"/81° 05' 99"
3. NW of Dockside Lounge; main anchorage, adjacent to planned mooring field I.
4. 24° 42' 15"/81° 06' 04"
5. 24° 42' 13"/81° 06' 30"
6. Westside of Dockside Lounge at first dock.
7. 24° 42' 32"/81° 04' 38"
8. 24° 42' 33"/81° 04' 62"

*Exhibit "A" cont.*

**Deliverables:** Water quality monitoring results for all parameters described in this plan. Presented in quarterly monitoring reports.

**Project Schedule:**

<b>Quarter:</b>	<b>Shall Commence on:</b>	<b>Deliverable Due:</b>
Quarter 1	August 1, 2008	October 31, 2008
Quarter 1	November 1, 2008	January 31, 2009
Quarter 3	February 1, 2009	April 30, 2009
Quarter 4	May 1, 2009	July 31, 2009
Quarter 5	August 1, 2009	October 31, 2009
Quarter 6	November 1, 2009	January 31, 2010
Quarter 7	February 1, 2010	April 30, 2010
Quarter 8	May 1, 2010	July 31, 2009



## CITY OF MARATHON, FLORIDA

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9805 Overseas Highway, Marathon, Florida 33050  
Phone: (305) 743-0033 Fax: (305) 743-3667  
www.ci.marathon.fl.us

May 18, 2010

Victoria Penick, Vice President  
U.S. Water Services Corporation  
4939 Cross Bayou Blvd.  
New Port Richey, FL 34652

Dear Ms. Penick,

The City of Marathon has been informed that US Water Services Corporation has purchased Synagro Technologies Inc. As per our conversations with your company's representative, Mr. Michael Pinto, US Water Services Corporation and the City of Marathon mutually wish to extend our agreement for water quality testing in Boot Key Harbor at the same terms and pricing. Pursuant to section 2.1 in the Service Agreement attached between the City of Marathon and Synagro Technologies Inc., dated August 1, 2009, the City may extend the agreement for an additional term of two, one (1) year extensions upon written notice from the City Manager to the Contractor.

This extension shall become effective upon receipt of this written notice.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roger T. Hernstadt", is written over a diagonal line.

Roger T. Hernstadt  
City Manager

Enclosure