

Sponsored by: Burnett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2008-186**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH BEACHCOMBERS OF
THE FLORIDA KEYS, LLC FOR BEACH CLEANING SERVICES IN
THE AMOUNT OF \$60,000 AND PROVIDING FOR AN EFFECTIVE
DATE**

WHEREAS, City staff published a request for proposals for beach cleaning, maintenance and restoration services for Sombrero and CocoPlum beaches; and

WHEREAS, the City receives reimbursement from Monroe County Tourist Development Council in the amount of \$115,887 annually for beach maintenance and will cover this award as well as other beach maintenance costs; and

WHEREAS, Beachcombers of the Florida Keys, LLC was the low bidder at \$60,000 for the first year and \$63,000 for the second year; and

WHEREAS, staff is recommending award of contract to Beachcombers of the Florida Keys, LLC.

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 Agreement between the City and Beachcombers of the Florida Keys, LLC to provide Beach Cleaning services in the City, a copy of which is attached as Exhibit "A," together with such 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 9th day of December, 2008.


THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Worthington, Ramsay, Snead, Vasil, Cinque
NOES: None
ABSENT: None
ABSTAIN: None

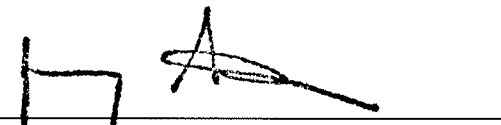
ATTEST:



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

CONTRACT

THIS CONTRACT is made this 9th day of December, 2008 by and between the City of Marathon, Florida, a Florida municipal corporation (the "City"), and Beachcomber of the Florida Keys, LLC, a Florida limited liability company (the "Contractor").

The parties, for the consideration provided for below, mutually agree as follows:

1. **SCOPE OF WORK** -The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals required to perform the scope of work as outlined in the Detailed Specifications attached hereto ("Work").
2. **COMPENSATION/PAYMENT**
 - 2.1. Contractor shall provide the City with an invoice on a monthly basis within ten (10) days of the end of each month stating the services provided in the preceding month.
 - 2.2. The City shall make payment on said invoices of approved amounts due which are not subject to set off, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished.
 - 2.3. The Contractor shall be compensated at the unit prices specified in the Proposal Schedule submitted to the City based upon the actual Work completed for the month.
3. **TERM**- This Agreement shall be effective upon execution by both parties and shall continue for a term of two (2) years. The City may, at its sole option, extend this Agreement on the same terms and conditions for an additional term of one (1) year. Such extension shall be effective upon receipt of a written notice from the City to the Contractor received no later than thirty (30) days prior to the date of termination.
4. **CONTRACTOR'S DUTY TO INSPECT** -The Contractor has carefully examined the described rights of way, water management areas and similar planting areas and has made sufficient tests and other investigations to fully satisfy himself as to site conditions, and he assumes full responsibility therefore. The Contractor shall be responsible for the repair or replacement of any facility damaged by the Contractor.
5. **NON-WAIVER**- The approval, and/or acceptance of any part of the Work by the City shall not operate as a waiver by City of any other terms and conditions of the Agreement.
6. **PROTECTION OF PROPERTY AND THE PUBLIC**- The Contractor shall continuously maintain adequate protection of all his Work from damage and shall

protect public and private property from injury or loss arising in connection with this contract as follows:

6.1. The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, the Construction Safety Act of 1969, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.

6.2. The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights and danger signals on or near the Work, from sunset to sunrise, suitable railings, barricades, or other hazards or other protective devices about unfinished work, open trenches, embankments, or other hazards and obstructions to traffic; provide all necessary security staff on the Work by day or by night for the safety of the public; and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.

6.3. The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the City) and of any land adjoining any work sites, which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or construction operations, and shall take all necessary or directed steps, to protect the property. The same care shall be exercised by all Contractor's and subcontractor's employees.

6.4. Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., 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 as manholes, valve boxes, meter boxes, street monuments, etc., 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.

7. **INDEMNIFICATION**

7.1. The Contractor shall indemnify 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 contract, caused by any act or omission of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.

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

7.3. The Contractor shall defend the City or provide for such defense, at the City's option.

7.4. The City has provided specific consideration for the indemnification of \$100.00 from the sums due to the Contractor under this Agreement.

7.5. 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 contract. Contractor shall secure and pay for all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.

8. **CONTRACT DOCUMENTS** -The following documents which were part of the Request for Proposals and the Contractor's Proposal submitted to the City shall, by this reference, be considered part of this Contract:

Instructions to Proposers;
All Addendums;
Contract Agreement;
Proposal;
Detailed Specifications;
Qualification Statement;
Insurance Certificates; and
Licenses.

9. **CONTRACTOR'S EMPLOYEES**

9.1. Contractor's employees shall serve the public in a courteous, helpful, and impartial manner.

9.2. Contractor shall, upon receipt of a written request from the City, immediately exclude any employee of Contractor from providing Work under this Agreement.

9.3. The Work contemplated in this Agreement is on public property, accordingly no alcoholic beverages shall be allowed.

10. **VEHICLES AND EQUIPMENT** -Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Agreement. All vehicles used by Contractor to provide services under this agreement shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public. The City may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles.

11. **INSURANCE**-The Contractor shall provide and maintain during the life of this Agreement the following coverages:

11.1. "Worker's Compensation Insurance" in amounts as specified by Florida Law.

11.2. Comprehensive and general liability and auto insurance policies. Insurance shall be provided with a limit of \$2,000,000.00 in each of three policies as follows:

a. Comprehensive General Liability Insurance, including Products and/or Completed Operations, Explosion Hazard, Collapse Hazard and Underground Property Damage Hazard. The City shall be named as additional insured.

b. Comprehensive Auto Liability Insurance. The City shall be named as an additional insured.

c. Contractual Liability Insurance. The City shall be named as additional insured.

11.3. All insurance shall be obtained from companies that are licensed and authorized to do business in the State of Florida.

11.4. At the time of execution of this Agreement, the Contractor will file with the City certificates of such insurance that are acceptable to the City. These certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to the City.

12. **ASSIGNMENT AND AMENDMENT** -No assignment by the Contractor of this contract or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a sub-contractor to perform its duties under this Agreement without prior written approval of the City. This Agreement may only

be amended by the parties with the same formalities as this Agreement.

13. **TERMINATION**

13.1. Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party.

13.2. Upon notice of such termination, the City shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.

13.3. After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Agreement, and shall do so on the date specified in the notice of termination.

13.4. The City may terminate this Agreement upon five (5) days written notice if the Contractor defaults on any material term of this Agreement.

14. **CHOICE OF LAW** -This contract shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County.

15. **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.

16. **ACCESS TO PUBLIC RECORDS-** The Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes. The City shall have the right to immediately terminate this contract for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Agreement for a period of three (3) years from the date of Termination.

17. **INSPECTION AND AUDIT-** During the term of this Agreement and for three (3) years from the date of Termination the 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 remit such payments to the City.

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

19. **WAIVER OF JURY TRIAL**- The parties irrevocably, knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.
20. **COUNTERPARTS**- This contract 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.
21. **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:
- City: City of Marathon
9805 Overseas Highway
Marathon, FL 33050
Attention: Clyde Burnett, City Manager
- Contractor: Beachcomber of the Florida Keys, LLC
P.O. Box 500476
Marathon, FL 33050
Attn: Richard Tompkins
22. **INDEPENDENT CONTRACTOR** -The Contractor 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.
23. **PROHIBITION OF CONTINGENCY FEES** - 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.

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and date first above written.

Attest:

CITY OF MARATHON

By: Diane Clavier
Diane Clavier, City Clerk

By: Mike Cinque
Mike Cinque, Mayor

By: [Signature]
City Attorney

Signed, sealed and witnessed in the presence of:

As to Contractor:

By: David M. Cofano

By: Rubal J. [Signature]

(*) In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.

Rating for beach cleaning bid. Closing November 20, 2008. Selection Dec. 2, 2008.

	Universal Beach Svc.	Beachcomber of the Florida Keys LLC
Price	0	40
40 points	0	40
	0	40
	0	40
Equipment sufficient to perform specialized Tasks	17	13
30 points	30	20
	30	0
	40	30
Experience both in beach cleaning And restoration	20	10
30 points	30	20
	30	0
	40	30
TOTAL	237	283