

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2009-09**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH AMERICAN UNDERWATER CONTRACTORS, INC. FOR CLEANING AND INSPECTION OF THE BOOT KEY HARBOR CITY MARINA MOORING FIELD IN AN AGGREGATE AMOUNT NOT TO EXCEED \$59,664; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City published a Request for Proposals for the cleaning and inspection of the Boot Key Harbor City Marina Mooring Field; and

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

**WHEREAS**, the City staff recommends American Underwater Contractors, Inc. as they have extensive local knowledge and experience working in Monroe County and the City of Marathon;

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

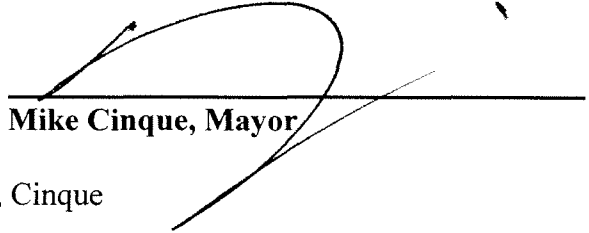
**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The City Council hereby authorizes the City Manager to enter into an Agreement with American Underwater Contractors Inc. for quarterly Mooring Buoy Cleaning and Inspections, a copy of which is attached as Exhibit "A," in an aggregate amount not to exceed \$59,664.00, together with such changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

**Section 3.** This resolution shall take effect immediately upon its adoption.

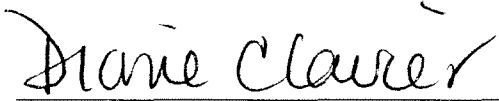
**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida, this 27<sup>th</sup> day of January, 2009

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Mike Cinque, Mayor**

AYES: Ramsay, Snead, Vasil, Worthington, 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 27<sup>th</sup> day of January, 2009, by and between the City of Marathon, Florida (the "City") and American Underwater Contractors, Inc. (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.
2. **COMPENSATION/PAYMENT**
  - 2.1. Contractor shall provide the City with an invoice on a tri-annual basis within ten (10) days of the end of each period stating the services provided in the preceding period.
  - 2.2. The City shall make payment of 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 based on the actual Work completed for the period.
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 not later than 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 itself as to site conditions, and the Contractor 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 the 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 its 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 shall, by this reference, be considered part of this Contract:

- Instructions to Proposers;
- All Addendums;
- Contract Agreement;
- Proposal;
- Detailed Specifications;
- Qualification Statement;
- Insurance Certificates
- 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 \$1,000,000.00 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 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 19, Florida Statutes. The City shall have the right to immediately terminate this contract for the refusal by the Contractor to comply with Chapter 19, 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:         American Underwater Contractors, Inc.  
                          17536 SE Conch Bar Ave.  
                          Tequesta, FL 33469  
                          Attn: David Foster, President

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: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Attorney

Signed, sealed and witnessed in the presence of:

American Underwater Contractors, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

(\* ) 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.



## EXHIBIT "A"

### SCOPE OF SERVICES

#### **Mooring Inspection, Maintenance and Photographic Job Specifications and Project Schedule:**

The City of Marathon owns 64 mooring units and 162 mooring units on State owned Harbor bottom in Boot Key Harbor, Marathon, Florida Keys for the purpose of mooring recreational boats in a mooring field on City Harbor bottom. The moorings are managed by the City and require tri-annual inspections to ensure functional integrity and safety. The mooring inspection report and DVD photography is to be accomplished within a time period not to exceed one month from the time of contract execution and tri-annually, thereafter.

The Consultant shall provide data regarding the current condition of the moorings to the Harbormaster as specified below. The Harbormaster, or designee, shall make all decisions regarding wear, erosion of metal, chafe and, if necessary, subsequent replacement of components for the moorings. Any additional work deemed necessary by the Harbormaster, or designee, 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 coverage including completed operations insurance of one (1) million dollars. The policy shall include the City as a certificate holder or an additional insured.

#### **Specifications**

Measure and record the current thickness of all shackles, swivels, and bolt heads/nuts relative to the as constructed measurement with a caliper for the purpose of detecting wear or alloy corrosion.

Light clean (no abrasion) all down-line and pennant components. This is to involve no scrubbing of the line which could damage fiber. Note any evidence of wear or chafe.

Replace all seizing material/wire in the shackles of each mooring system.

Clean all chaffing hose and note any evidence of wear.

Clean the main buoy and inspect line at location where it runs through the buoy. Inspect lettering and numbering on buoy for wear or non-adhesion.

Inspect all eye splices to ensure they have a minimum of four (4) complete tucks in the splices.

Clean and inspect the underwater mid-float and note any cracks, splits, or other deterioration. Check for correct as-built position alignment on down-line system.

Note any objects on the bay bottom in the area around the anchor head. Inspect the shaft that may be exposed above the mud line for any wear or deterioration and measure thickness, compared to as-built thickness, with a caliper gauge.

**Project Schedule**

<u>Schedule</u>	<u>Commence</u>	<u>Due Deliverables</u>
January '09 Inspection	Within 15 days of execution of agreement	Within 30 days of commencement
April '09 Inspection	April 1, 2009	April 30, 2009
August '09 Inspection	August 1, 2009	August 31, 2009
December '09 Inspection	December 1, 2009	December 31, 2009
April '10 Inspection	April 1, 2010	April 30, 2010
August '10 Inspection	August 1, 2010	August 31, 2010

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

The Harbormaster, 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 Harbormaster's final examination and analysis on a monitor. Video may be either color or black and white, color is preferred.

A DVD of the 226 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 Harbormaster. Items for repair or replacement will be negotiated separately.

All deliverables and invoices are to be addressed to the

City of Marathon  
Attn: Harbormaster,  
800 – 35<sup>th</sup> Street Ocean  
Marathon, FL 33050  
or hand delivered to this address.