

Sponsored by: Burnett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-118**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING WORK AUTHORIZATION #1 TO GONZALEZ BROTHERS LANDSCAPING, INC. CONTINUING SERVICES AGREEMENT DATED JANUARY 8, 2008 IN THE AMOUNT OF \$25,000 FOR FULFILLING THE REQUIREMENTS OF THE URBAN AND COMMUNITY FORESTRY GRANT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Marathon (the "City") desires to enhance the overall appearance of the community by the implementation of a City-wide beautification and appearance improvement program; and

WHEREAS, the Florida Department of Agriculture and Consumer Services ("FDACS") awarded the City of Marathon \$12,500 in matching Urban and Community Forestry Grant Funds; and

WHEREAS, Gonzalez Brothers Landscaping Inc. was the sole bidder at \$25,000.

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

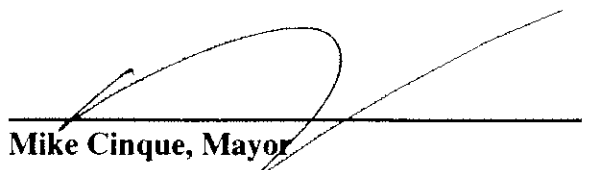
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves the work authorization #1 to Gonzalez Brothers Landscaping Contract, a copy of which is attached hereto as Exhibit A. The City Council authorizes the City Manager to execute work authorization #1.

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 25th day of August 2009.

THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Snead, Ramsay, 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:**

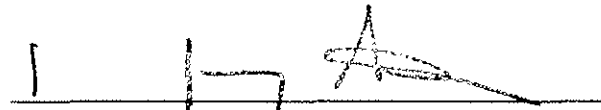

City Attorney

EXHIBIT "A"

PROJECT AGREEMENT

Work Authorization No. 1

Pursuant to the provisions contained in the "Continuing Services Agreement" between the CITY OF MARATHON, FLORIDA (the "CITY") and Gonzalez Brothers Landscaping, Inc., ("CONTRACTOR") dated January 8, 2008, this Project Agreement authorizes the CONTRACTOR to provide the services as set forth below:

The CITY and CONTRACTOR agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The CONTRACTOR shall provide the services to the CITY for the Project as described in the "Scope of Services and Project Schedule" attached as Exhibit "1."

1.2 The CITY may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the Continuing Services Agreement, prior to any deviation from the terms of the Project Agreement, including the initiation of any extra work.

SECTION 2. TERM/TIME OF PERFORMANCE/DAMAGE

2.1 **Term.** This Project Agreement shall commence on the date this instrument is fully executed by all parties ("Commencement Date") and shall continue in full force and effect, unless otherwise terminated pursuant to Section 5 or other applicable provisions of this Project Agreement for a period of 120 days. The City Manager, in his sole discretion, may extend the term of this Agreement through written notification to the CONTRACTOR. Such extension shall not exceed 30 days. No further extensions of this Agreement shall be effective unless authorized by the CITY Council.

2.2 **Contract Time.** The CONTRACTOR shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with the time frames set forth in Exhibit "1". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

2.3 **Time is of the Essence.** All limitations of time set forth in this Agreement are of the essence.

SECTION 3. AMOUNT, BASIS AND METHOD OF COMPENSATION

3.1 **Lump Sum Compensation.** CITY agrees to pay CONTRACTOR as compensation for performance of all services described in Exhibit "1" \$25,000.

[OR, IF HOURLY, "CITY AGREES TO PAY CONTRACTOR COMPENSATION AT CONTRACTOR'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED \$_____.]

3.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, facsimile, courier services, mileage (at a rate approved by the CITY), photo and reproduction services. All document reproductions are also reimbursable at a rate approved by the CITY.

SECTION 4. BILLING AND PAYMENTS TO THE CONTRACTOR

4.1 **Invoices.** CONTRACTOR shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the CITY. The CITY shall pay CONTRACTOR within thirty (30) calendar days of approval by the City Manager of any invoices submitted by CONTRACTOR to the CITY.

4.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the CITY for payment to the CONTRACTOR is disputed, or additional backup documentation is required, the CITY shall notify the CONTRACTOR within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONTRACTOR shall provide the CITY with additional backup documentation within five (5) working days of the date of the CITY'S notice. The CITY may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONTRACTOR. The CITY, at its sole discretion, may pay to the CONTRACTOR the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

4.3 **Suspension of Payment.** In the event that the CITY becomes credibly informed that any representations of the CONTRACTOR, provided pursuant to Subparagraph 3.1, are wholly or partially inaccurate, or in the event that the CONTRACTOR is not in compliance with any term or condition of this Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the CONTRACTOR until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the CITY's reasonable satisfaction.

4.4 **Retainage.** The CITY reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONTRACTOR until the project is completed. Said retainage may be withheld at the sole discretion of the City Manager and as security for the successful completion of the CONTRACTOR'S duties and responsibilities under the Project Agreement.

4.5 **Final Payment.** Submission of the CONTRACTOR'S invoice for final payment and reimbursement shall constitute the CONTRACTOR'S representation to the CITY that, upon receipt from the CITY of the amount invoiced, all obligations of the CONTRACTOR to others, including its consultants, incurred in connection with the Project, shall be paid in full. The CONTRACTOR shall deliver to the CITY all documents requested by the CITY evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the CITY by the CONTRACTOR.

SECTION 5. TERMINATION/SUSPENSION

5.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONTRACTOR abandons this Project Agreement or causes it to be terminated by the CITY, the CONTRACTOR shall indemnify the CITY against any loss pertaining to this termination.

5.2 **For Convenience.** This Project Agreement may be terminated by the CITY for convenience upon fourteen (14) calendar days' written notice to the CONTRACTOR. In the event of termination, the CONTRACTOR shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subcontractor obligations. The CONTRACTOR shall be compensated for all services performed to the satisfaction of the CITY and for reimbursable expenses incurred prior to the date of termination. The CONTRACTOR shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of Paragraph 4.1 of this Project Agreement. Under no circumstances shall the CITY make any payment to the CONTRACTOR for services which have not been performed.

5.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONTRACTOR's work product shall become the property of the CITY and the CONTRACTOR shall, within ten (10) working days of receipt of written direction from the CITY, transfer to either the CITY or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONTRACTOR pertaining to this Project Agreement.

SECTION 6. INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICES AGREEMENT

This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated 01/08/08 between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

ATTEST:

CITY OF MARATHON

Diane Clawson
City Clerk

By: Clyde Burnett
Clyde Burnett, City Manager

Date: 8/28/09

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

[Signature]
City Attorney

GONZALEZ BROTHERS LANDSCAPING

Witness

By: Luis Gonzalez

Date: 8/28/09

Scope of Services and Project Schedule

Scope of Services

Furnish, prepare site, install and maintain the following the following plant material:

15 Mahogany trees	4" caliper 14' tall 5' to 6' spread
5 Gumbo Limbo trees	4" caliper 14+ feet 5' spread
10 Geiger Trees	2" caliper 8' to 10' tall
5 Pigeon Plums	3" caliper 14' tall 5' spread
2 Thatch Palms	45 gallons
1 Lignum Vitae	2 1/2" caliper 7' to 8' tall
18 Spanish Stoppers	45 gallon
33 Silver Button Wood	7 gallons
6 Coco Plum	7 gallons
3 Fire Bush	7 Gallons

All material must be Florida Grade # 1

All material must use 3/2/40 Starter Fertilizer at planting and 30 days later

90 day maintenance to be included with 2 year plant material guarantee (instructions to City for watering)

Locate underground utilities and hand pot hole before digging

Transplant approximately 2 pigeon plums, 2 geigers, 6 gumbo limbos, from Marathon Community Park to Marina or other location in Marathon Community Park (to be field located by City Biologist)

All planting to be per FDOT Landscape installation specifications Index No. 544 (pages 1,2,3)

All material to be planted at Marathon Community Park and Marathon Marina per attached site plans

All material must be planted and invoiced by September 30, 2009

Project estimate \$25,000

Contact Susie Thomas 289-4103 or Patty Childress 289-4110 with any questions.