

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-95**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH SWEETWATER ENVIRONMENTAL INC. FOR SLUDGE DISPOSAL SERVICES AT A RATE OF \$0.22 PER GALLON AND IN AN AMOUNT NOT TO EXCEED A TOTAL OF \$175,000 ANNUALLY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, an Invitation To Bid (ITB) for wastewater sludge hauling was posted on June 2, 2009, with sealed bids opened on July 7, 2009; and

WHEREAS, Sweetwater Environmental was the lowest responsive and responsible bidder; and

WHEREAS, the City Council of the City of Marathon (the "City") desires to enter into an agreement with Sweetwater Corporation (the "Contractor") to provide sludge haul out and disposal services in an amount not to exceed \$175,000 annually.

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 are incorporated herein.

Section 2. The City Council hereby awards the contract for wastewater sludge hauling to Sweetwater Environmental, Inc.

Section 3. The Agreement between the City and Sweetwater Environmental Inc. for the sludge haul out services and disposal in an amount not to exceed \$175,000, a copy of which is attached hereto as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved.

Section 4. The City Manager is authorized to sign the agreement.

Section 5. This resolution shall take effect immediately upon its adoption

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 28th day of July, 2009


THE CITY OF MARATHON, FLORIDA



Mayor Mike Cinque

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

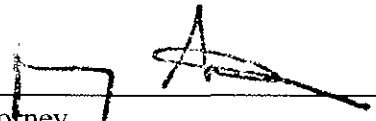
ATTEST:



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

**AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
SWEETWATER ENVIRONMENTAL**

THIS AGREEMENT is made between Sweetwater Environmental, a Florida corporation whose address and principal place of business is 99101 Overseas Highway, Key Largo, FL 33037, (hereinafter the "Contractor"), and the CITY OF MARATHON, FLORIDA, a Florida municipal corporation whose address and principal place of business is 9805 Overseas Highway, Marathon, Florida 33050, (hereinafter the "City").

WHEREAS, the City desires to engage the Contractor to provide sludge disposal services (the "Work") as 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.**

The Contractor shall provide sludge disposal service to the City as set forth in the Scope of Work as specified in Exhibit "A," attached to this Agreement, and made a part hereof by this reference. The Contractor shall provide the sludge disposal service within 24 hours of receiving a verbal request from the City.

2. **Term/Commencement Date.**

- (a) This Agreement shall remain in effect for two years from July 28, 2009, unless earlier terminated in accordance with Paragraph 7.
- (b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in the Work Schedule, unless extended by the City Manager.

3. **Compensation and Payment.**

The Contractor shall be compensated \$.22 per gallon and not to exceed \$175,000 annually.

- (a) The Contractor shall invoice the City on a monthly basis. The total amount invoiced shall not exceed \$175,000.00 annually. All invoices shall provide a detailed statement of the services provided and the number of gallons pumped by Contractor for the period of time covered by the invoice.
- (b) The City shall pay Contractor in accordance with the Florida Prompt Payment Act.

- (c) 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.

4. **Subcontractors.**

- (a) The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Work.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager.
- (c) In the event that the Contractor is unable to perform the Work for a period of 24 hours or more, for any reason, then the Contractor shall provide a subcontractor or other means to perform the Work until such time as the Contractor is able to resume the Work.

5. **City's Responsibilities.**

- (a) 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.
- (b) 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.**

- (a) The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Work 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 Work, it is determined that the Contractor's deliverables are incorrect, defective or fail to conform to the Scope of Work, upon written notification from the City Manager, the Contractor shall at Contractors sole expense, immediately correct the work.

7. **Termination.**

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

- (b) Upon receipt of the City's written notice of termination, Contractor shall stop the Work unless directed otherwise by the City Manager.
- (c) 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 7(d).
- (d) The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Work 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.

8. **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 coverages shall include a minimum of:

- (a) 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.
- (b) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault 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. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- (c) 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.
- (d) 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.

9. **Nondiscrimination.**

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.

10. **Agreement Documents.**

The following documents shall, by this reference, be considered part of this Agreement:

All Addendums;
Agreement;
Bid Form;
Scope of Work/Specifications;
Insurance Certificates; and
Bonds.

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

- a) 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.
- (b) 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.**

- (a) 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.
- (b) The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

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 L. Morales., Esq
City Attorney
Stearns Weaver Miller
Weissler Alhadeff & Sitterson, P.A.
150 W Flagler St, Suite 2200
Miami, FL 33130

For The Contractor: Spence Steadman, General Manager
Sweetwater Environmental Inc.
2367 US Highway 27 South
Sebring, FL 33870
(305) 453-7999

14. **Governing Law.**

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.**

- (a) 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.
- (b) 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.**

- (a) 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.
- (b) 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.
- (c) 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.**

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.**

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.**

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.**

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

21. **Waiver.**

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.**

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.**

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.**

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.

25. **Authorization to Sign Agreement.**

The execution and delivery of this Agreement by Contractor is within Contractor's capacity and all requisite action has been taken to make this Agreement valid and binding on Contractor in accordance with its terms

IN WITNESS WHEREOF, the parties hereto have executed 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 Vice President, whose representative has been duly authorized to execute same.

Attest:

CITY OF MARATHON

Diane Clavier
Diane Clavier, 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

SWEETWATER ENVIRONMENTAL

By: [Signature]
Date: 8/19/09

EXHIBIT "A"
SCOPE OF WORK

The work consists of the hauling and disposal of sludge effluent. The contractor shall submit one invoice for all sludge hauling to the City of Marathon on a monthly basis. The Contractor shall provide the sludge haul-out service within 24 hours of receiving a verbal request from the City.