

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2010-26**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE PROPOSAL, AND APPROVING A PROJECT AGREEMENT WORK AUTHORIZATION WITH UNIVERSAL BEACH SERVICES CORPORATION FOR A BEACH DUNE RESTORATION PROJECT AT COCOPLUM AND SOMBRERO BEACHES IN AN AMOUNT NOT TO EXCEED \$42,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE PROJECT AGREEMENT WORK AUTHORIZATION ON BEHALF OF THE CITY AND EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon (the “City”) received a FEMA work authorization to replace sand dunes on both Cocoplum Beach and Sombrero Beach as a result of Tropical Storms Faye & Ike (“Project”); and

**WHEREAS**, the City published a request for proposals for the Project in accordance with the City’s procurement policy (the “RFP”), and the proposal submitted by Universal Beach Services Corporation (the “Contractor”) was ranked number one by City staff; and

**WHEREAS**, the City and Contractor previously entered into a continuing services agreement pursuant to Resolution No. 2008-01; and

**WHEREAS**, the City Council finds that the Consultant’s proposal meets the requirements of the RFP and it is in the best interest of the City to execute a project agreement work authorization with the Contractor for the Project.

**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 by this reference.

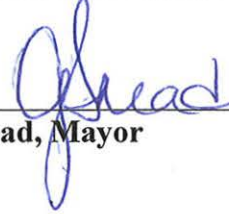
**Section 2.** The City hereby accepts the proposal submitted by the Contractor.

**Section 3.** The project agreement work authorization between the City and Consultant for the Project, a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The City Manager is authorized to execute the agreement on behalf of the City and expend budgeted funds.

**Section 4.** This Resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9<sup>TH</sup> DAY OF MARCH, 2010.**

**THE CITY OF MARATHON, FLORIDA**



**Ginger Snead, Mayor**

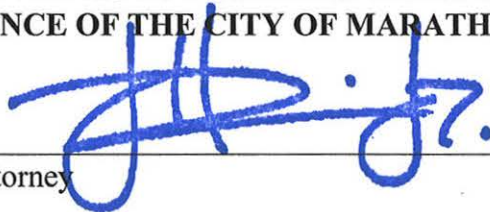
AYES: Ramsay, Keating, Cinque, Snead  
NOES: Worthington  
ABSENT: None  
ABSTAIN: None

**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 UNIVERSAL BEACH SERVICES, CORP. ("CONTRACTOR") dated March 9, 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. 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" an amount not to exceed \$42,000. (At the rate of \$4.45 cents per cubic yard of dune restoration sand)

~~[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 March 9, 2010 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 Clavier  
City Clerk

By: [Signature]  
Roger T. Hernstadt, City Manager

Date: 03/24/10

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

[Signature]  
City Attorney

Universal Beach Services, Corp.

[Signature]  
Witness

By: [Signature]

Date: MARCH 22, 2010

## Scope of Services and Project Schedule

The work consists of placing up to 4,444 cubic yards (exact amount to be determined) of sand along the shore above the Mean High Water Line on the east side of Sombrero Beach and 2,948 cubic yards of sand on the west side of Sombrero Beach creating and restoring the dune/berm and stabilizing it with native vegetation and placing 2,045 cubic yards of sand along the shore above the Mean High Water Line on Coco Plum Beach creating and restoring a dune/berm and assist City in preserving and enhancing native dune vegetation to help stabilize the restored dune/berm.

Specific actions include, but are not limited to, the following:

Conduct preconstruction conference and coordinate with the City's representative.

In coordination with the City's representative and in accordance with the approved restoration plan, place sand in designated areas using the proper environmentally sensitive equipment (i.e. trucks and tractors with balloon type tires).

Work with the City in the planting and stabilization phase of the project.

Monitor and photograph all aspects of project activity to ensure a visible record.

Provide all other necessary technical assistance.

Gather all necessary supporting documents.

Prepare final status report.

Work to commence upon receipt of FDEP permit and sand delivery