

**CITY OF MARATHON, FLORIDA
RESOLUTION 2010-28**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE CITY OF MARATHON AND ADVENTURE ENVIRONMENTAL, INC. FOR MANGROVE TRIMMING SERVICES IN AN AMOUNT NOT TO EXCEED \$16,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City received a number of complaints from property owners on Bruce Ct., and 98th & 99th streets regarding mangrove overgrowth obstructing adjacent navigable canals; and

WHEREAS, the City determined to seek permits and issue an invitation to bid to engage the services of a contractor to trim the mangroves along the canal frontages in question and the City property between 98th and 99th Streets; and

WHEREAS, Adventure Environmental Inc, was the lowest responsible and responsive bidder in an amount not to exceed \$16,600.00; and

WHEREAS, funds allocated for the project will be reimbursed by the property owners whose properties are trimmed;

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

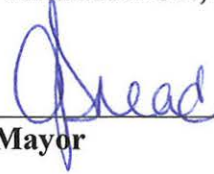
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The agreement between the City and Adventure Environmental Inc for the provision of mangrove trimming services 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 and expend budgeted funds on behalf of the City.

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 March, 2010.

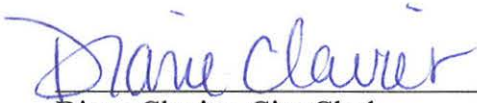
THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

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

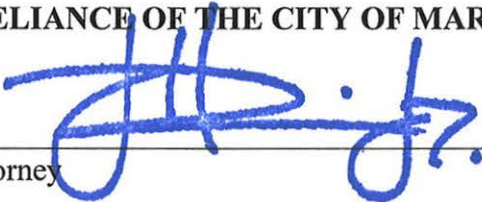
ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
AND
ADVENTURE ENVIRONMENTAL, INC.**

THIS AGREEMENT is made as of this 9th day of March, 2010 for mangrove trimming between **ADVENTURE ENVIRONMENTAL, INC.**, a Florida corporation, (hereinafter the “Contractor”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the Contractor and City, through mutual negotiation, have agreed upon a scope of services, and fees for mangrove trimming services as described below (the “Project”); and

WHEREAS, the City desires to engage the Contractor to perform mangrove trimming services 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.**

1.1 The Contractor shall furnish professional mangrove trimming services to the City as outlined in the approved scope of services set forth in Exhibit “A”. The City shall not be prevented in any manner from retaining other firms to complete mangrove trimming services at its sole discretion. No minimum amount of such work or compensation hereunder will be assured to the Contractor.

2. **Term/Commencement Date.**

2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through June 30, 2010, unless earlier terminated in accordance with Paragraph 8 hereof. The City Manager may extend the term of this Agreement up to an additional 30 days by prior written notice to the Contractor.

2.2 Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Project within the timeframes set forth in section 2.1 unless extended in writing by the City Manager.

3. **Compensation and Payment.**

3.1 The Contractor shall be compensated in accordance with the rates set forth in Exhibit “B” attached hereto.

- 3.2 The Contractor shall invoice the City upon the completion of each phase of the Project in accordance with the Project Schedule set forth in Exhibit "C". The Contractor shall provide written documentation to justify the invoice. No payment shall be made until Contractor delivers to the City complete original releases of all liens and claims signed by all subcontractors, material men, suppliers, and vendors (if applicable) on a form approved by the City, and an affidavit stating that so far as the Contractor has knowledge or information the Releases include and cover all materials and work for which a lien or claim could be filed.
- 3.3 The City shall pay Contractor in accordance with the Florida Prompt Payment Act.
- 3.4 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. 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.**

- 4.1 The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Project.
- 4.2 Any subcontractors used on the Project must have the prior written approval of the City Manager.

5. **City's Responsibilities**

- 5.1 The City shall furnish to Contractor, at the Contractor's written request, all available maps, plans, existing studies, reports and other data pertinent to the work to be performed by Contractor, in possession of the City.
- 5.2 The City shall 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**

- 6.1 The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a professional mangrove trimmer under similar circumstances. If at any time during the term of this Agreement, it is determined that the

Contractor's work is incorrect, defective or fails to conform to the Scope of Work of the Project, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the work.

7. **Termination.**

- 7.1 The City Manager without cause may terminate this Agreement upon seven (7) days prior written notice to the Contractor, or immediately with cause.
- 7.2 Upon receipt of the City's written notice of termination, Contractor shall stop work on the Project unless directed otherwise in writing by the City Manager.
- 7.3 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 7.4.

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:

- 8.1 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.
- 8.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$500,000 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.
- 8.3 Commercial General Liability. If applicable, 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.

- 8.4 Professional Liability: The Contractor shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 8.5 Prior to commencement of any work governed by this contract that is completed from navigable US waters, the Contractor shall obtain Jones Act and/or Longshore And Harbor Workers Compensation Insurance with limits sufficient to respond to the applicable State and/or Federal statutes. The minimum limits acceptable shall be \$1,000,000 per occurrence. Failure to obtain such insurance shall constitute a default of this contract and disbarment from future City of Marathon Service Agreements.
- 8.6 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. 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 agrees to abide by all Federal and State laws regarding nondiscrimination

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

- 10.1 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.
- 10.2 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.

11. **Indemnification.**

- 11.1 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.

11.2 The provisions of this Section 11 shall survive termination of this Agreement.

12. **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: Roger Hernstandt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

With Copy to: City Attorney
Stearns Weaver Miller
Weissler Alhadeff & Sitterson, P.A.
150 W. Flagler Street, Suite 2200
Miami, Florida 33130
305/789-3200

For The Supplier: Greg Tolphin, Owner
Adventure Environmental, Inc.
12935 SW 87th Avenue
Miami, FL 33176
(305) 254-8887

13. **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 of the State of Florida or the United States District Court for the Southern District of Florida.

14. **Entire Agreement/Modification/Amendment.**

- 14.1 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.
- 14.2 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.

15. **Ownership and Access to Records and Audits.**

- 15.1 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.
- 15.2 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.
- 15.3 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.

16. **Nonassignability.**

This Agreement shall not be assignable by Contractor unless such assignment is first approved in writing 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.

17. **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.

18. **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.

19. **Compliance with Laws.**

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

20. **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.

21. **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.

22. **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.

23. **Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original and each such counterpart shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto hereby execute 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 the Contractor, signing by and through its Vice President, whose representative has been duly authorized to execute same.

Attest:

Diane Clavier
Diane Clavier, City Clerk

CITY OF MARATHON

By: [Signature]
Roger Hernstandt, City Manager

Date: 3/17/10

Approved by City Attorney
for legal sufficiency for City
use only:

[Signature]
City Attorney

CONTRACTOR

By: [Signature]

Date: March 03, 2010

Gregory Tolpin VP
Adventure Environmental Inc

Exhibit "A"

Scope of Services

Lateral branches of mangroves will be trimmed to improve navigation on identified canals only. No removal or height reduction is anticipated at this time. Trimming will be done from barge or boat and branches removed to appropriate upland location identified by the City, mulched, and properly disposed.

Bruce Court W – 525 linear feet



City of Marathon, Florida
Official Map Product
Mangrove Trimming Application
Project Site - Bruce Ct. West
2006 Aerials



Bruce Court E – 1060 linear feet



City of Marathon, Florida
 Official Map Product
 Mangrove Trimming Application
 Project Site - Bruce Ct. East
 2006 Aerials



98th-99th Street – 550 linear feet



City of Marathon, Florida
 Official Map Product
 Mangrove Trimming Application
 City of Marathon Property - 98th & 99th Streets
 2006 Aerials



The City of Marathon will be responsible for obtaining all appropriate permits from Florida Department of Environmental Protection prior to commencement of work.

Please submit a bid proposal by the close of business on December 21, 2009. Contact Patti Childress, Land Steward/Biologist at 305/289-4110 or childressp@ci.marathon.fl.us for any questions regarding this project.

EXHIBIT "B"

WORK BREAKDOWN SCHEDULE

To:

City of Marathon
9805 Overseas Hwy
Marathon, FL 33050

Quantity	Item	Units	Description	Unit Price	Total
1	1	Ea	Phase 1: Bruce Court-1585 LF	\$10,790.00	\$10,790.00
1	1	Ea	Phase 2: 98th-99th St.-550 LF	\$5,810.00	\$5,810.00
				Subtotal	\$16,600.00
				Total	\$16,600.00

Exhibit “C”

Project Schedule

Phase One

Bruce Court to begin within two (2) weeks of signed Service Agreement and completed within seven (7) to ten (10) business days from start date.

Phase Two

98th-99th Street area to begin within two (2) weeks of completing Phase One and completed within seven (7) to ten (10) business days from start date.