

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2011-125**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AWARD OF BID AND CONTRACT BETWEEN THE CITY OF MARATHON, FLORIDA AND SEAMAR DIVERS, LLC., IN AN AMOUNT NOT TO EXCEED \$15,998.54 FOR CLEANING AND INSPECTION OF THE MOORINGS INSTALLED IN BOOT KEY HARBOR; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the "City") published an Invitation to Bid for the cleaning and inspection of the 226 moorings installed in the Boot Key Harbor Mooring Field (the "Project"); and

**WHEREAS**, the moorings are managed by the City and require cleaning and inspections to insure their functional integrity and safety; and

**WHEREAS**, it was determined that the bid received from Seamar Divers, LLC. (the "Contractor"), in the amount of \$15,998.54 was the lowest responsive and responsible bid for the Project; and

**WHEREAS**, the City Council finds that accepting the Contractor's bid and awarding the Project contract to the Contractor is in the best interest of the City.

**NOW, THEREFOR 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 Project contract between the City and Contractor in an amount not to exceed \$15,998.54, a copy of which is attached as Exhibit "A," together with such changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved. The City Manager is authorized to execute the contract 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 13<sup>th</sup> DAY OF DECEMBER, 2011**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Pete Worthington, Mayor**

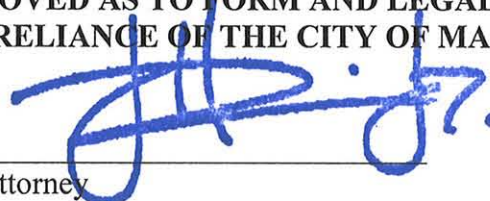
AYES: Cinque, Keating, Ramsay, Snead, Worthington  
NOES: None  
ABSENT: None  
ABSTAIN: None

**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 13<sup>th</sup> day of December, 2011 by and between the City of Marathon, Florida (the "City") and Seamar Divers, LLC (the "Contractor").

The parties, for the consideration provided for below, mutually agree as follows:

- 4.1. **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.
- 4.2. **COMPENSATION/PAYMENT**
  - 4.2.1. Contractor shall provide the City with an invoice upon completion of the project.
- 4.3. **TERM-** This Agreement shall be effective December 30, 2011 and shall continue until December 30, 2012. The City may, at its sole option, extend this Agreement on the same terms and conditions for two (2) additional terms of one (1) year each. Such extensions shall be effective upon receipt of a written notice from the City Manager to the Contractor received not later than 30 days prior to the date of termination.
- 4.4. **CONTRACTOR'S DUTY TO INSPECT-** The Contractor has carefully examined the described site areas and similar site areas and has made sufficient tests and other investigations to fully satisfy himself/herself/itself as to site conditions, and he/she/it assumes full responsibility therefore. The Contractor shall be responsible for the repair or replacement of any facility damaged by the Contractor.
- 4.5. **NON-WAIVER-** The approval, and/or acceptance of any part of the Work by the City shall not operate as a waiver by City of any other terms and conditions of the Agreement.
- 4.6. **PROTECTION OF PROPERTY AND THE PUBLIC-** The Contractor shall continuously maintain adequate protection of all the Work from damage and shall protect public and private property from injury or loss arising in connection with the Contract as follows:
  - 4.6.1. 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.

4.6.2. The Contractor shall take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.

4.6.3. 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 or body of water 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, and all environmental protection precautions are adhered to, and shall take all necessary or directed steps, to protect the property and environment. The same care shall be exercised by all Contractor's and subcontractor's employees.

#### 4.7 . INDEMNIFICATION

4.7.1 . 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.

4.7.2. This indemnification obligation shall survive the termination of this Agreement.

4.7.3. The Contractor shall defend the City or provide for such defense, at the City's option.

4.7.4. 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.

4.8. CONTRACT DOCUMENTS- The following documents shall, by this reference, be considered part of this Contract:

Instructions to Bidders;

All Addendums;

Contract Agreement;

Invitation to Bid Document;

Bid;

Detailed Specifications;

Qualification Statement;

Insurance Certificates;

Licenses;

**4.9. CONTRACTOR'S EMPLOYEES**

4.9.1. Contractor's employees shall serve the public in a courteous, helpful, and impartial manner.

4.9.2. Contractor shall, upon receipt of a written request from the City, immediately exclude any employee of Contractor from providing Work under this Agreement.

4.9.3. The Work contemplated in this Agreement is on public property, accordingly no alcoholic beverages shall be allowed.

4.10. . **INSURANCE**- The Contractor shall provide and maintain during the life of this Agreement the following coverages.

4.10.1. "Worker's Compensation Insurance" in amounts as specified by Florida Law.

4.10.2. Comprehensive and general liability insurance shall be provided with a limit of \$1,000,000.00 each:

a. Comprehensive Auto Liability Insurance shall be provided with a limit of \$300,000.00 and the City shall be named as an additional insured.

b. United States Longshore and Harborworkers (USL&H) and Jones Act.

c. Completed Operations and Marine Employers Liability

4.10.3. All insurance shall be obtained from companies that are licensed and authorized to do business in the State of Florida.

4.10.4. 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.

4. 11. **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 Contract without prior written approval of the City. This Contract may only be amended by the parties with the same formalities as this Contract.

**4.12. TERMINATION**

4.12.1 . Either party may terminate this Contract without cause upon 30 days written notice to the other party.

4.12.2. 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.

4.12.3 . After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Contract, and shall do so on the date specified in the notice of termination.

4.12.4. The City may terminate this Contract upon five (5) days written notice if the Contractor defaults on any material term of this Contract.

4.13. **CHOICE OF LAW**- This contract shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County.

4.14. **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.

4.15. **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 Contract for a period of three (3) years from the date of Termination.

4.16. **INSPECTION AND AUDIT**- During the term of this Contract 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 Contract 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.

4.17. **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.

4.18. **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 Contract.

4.19. **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.

4.20. **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: Roger Hernstadt, City Manager

Contractor: Eloy J. Anaya  
Seamar Divers, LLC  
11379 NW 122 St.  
Miami, FL 33178

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: Pete Worthington

Pete Worthington, Mayor

By: [Signature]  
City Attorney

Signed, sealed and witnessed in the

presence of:

As to Contractor: [Signature]  
President City Mayors  
Seamless Divers, LLC

By: [Signature]

By: [Signature] J. S. [Signature]

( \*) 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.