

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2011-24**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING CERTAIN PURCHASES IN EXCESS OF \$10,000 AND LESS THAN \$25,000; WAIVING COMPETITIVE BIDDING ON LANDSCAPING DESIGN CONTRACT WITH ELIZABETH NEWLAND LANDSCAPE ARCHITECTURE, LLC, FOR LANDSCAPING SERVICES FOR SERVICE AREA7 WASTE WATER TREATMENT PLANT IN AN AMOUNT NOT TO EXCEED \$13,000.00, AND APPROVING AN \$11,825 PURCHASE FROM KORTKAT INC. FOR ENGINEERED WOOD FIBER FOR ROTARY PLAYGROUND AND SOMBRERO BEACH; AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, pursuant to Resolution 2003-134, the City Council of the City of Marathon, Florida (the "City"), adopted Purchasing Policies and Procedures after determining that it was fiscally prudent and in the best interests of the City's residents for the City to adopt policies and procedures for City employees and officials regarding the purchasing and acquisition of contractual services, equipment, goods, professional services and other similar types of services; and

WHEREAS, pursuant to Resolution 2007-156, the City Council amended the Purchasing Policies and Procedures to provide that any purchases over \$10,000 and less than \$25,000 must be placed on a City Council agenda as a consent item for approval prior to execution of the contract or consummation of the purchase; and

WHEREAS, the City Manager has authorized staff to prepare purchase orders for those items set forth on Exhibit "A" attached hereto, and now wishes to bring them before City Council as a consent item.

**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 purchases set forth on Exhibit "A," attached hereto; authorizes the waiver of the City's competitive bidding procedures for the landscaping design contract with Elizabeth Newland Landscape Architecture, LLC, for landscaping services for Service Area7 waste water treatment plant; and the City Manager is authorized to execute any agreements in connection with this purchase 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 29<sup>th</sup> DAY OF MARCH, 2011.**

**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 LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_  
City Attorney

<b>Vendor</b>	<b>Scope of Work</b>	<b>Proposal</b>
1 Elizabeth Newland Landscape Architecture, LLC	Landscaping Plans for SA7 WWTP	\$13,000
2 Korkat, Inc.	350 Cu Yds Engineered wood fiber for Rotary Park, 30 Cu Yds Engineered wood fiber for new slide at Sombrero Beach	\$11,825
3		

## **AGREEMENT BETWEEN CLIENT AND LANDSCAPE ARCHITECT**

This Agreement, effective as of March 20, 2011 is between Client: City of Marathon 9805 Overseas Highway, Marathon Florida 33050 and Landscape Architect: Elizabeth Newland Landscape Architecture, LLC, P. O. Box 140908, Coral Gables, Florida 33114 for the following Project: Area 7 Wastewater Treatment Plant, US 1, Grassy Key, Florida 33050.

### **Article 1 Landscape Architect's Basic and Additional Services**

#### **A. Landscape Architect's Basic Services are in the following phases:**

1. **Schematic Design**-Provide schematic landscape architectural design, typical site section and order of magnitude cost estimate for landscape plan for the landscape buffer for 17,000 SF site. Attendance by Landscape Architect at one coordination meeting with City of Marathon management.
2. **Construction Documentation**-Based on approved schematic landscape architectural design and budget provide final landscape plan, planting details, final order of magnitude cost estimate, specifications and maintenance guidelines. Attendance by Landscape Architect at one coordination meeting with City of Marathon management.
3. **Bidding and Negotiation**-Provide assistance with the review of landscape bid submittals and analysis of bidder's qualifications. Attendance by Landscape Architect at one coordination meeting with City of Marathon management.
4. **Project Administration**-Provide project administration services which include attendance at four two hour coordination meetings with City of Marathon management or City selected landscape contractor and one eight hour trip to approve plant material within Miami-Dade County.

#### **B. Additional Services beyond Landscape Architect's Basic Services described above may be provided if confirmed in writing by Client and Landscape Architect.**

**C. Excluded Services are not a part of Landscape Architect's Basic or Additional Services and are the responsibility of others.** Excluded Services include, but are not limited to, the following: Civil engineering, parking lot design, drainage plans; structural, electrical, plumbing or mechanical engineering; geotechnical engineering; landscape irrigation design and engineering; water feature engineering; City or regulatory permitting; subsurface conditions; soil issues (including suitability for plant material, soil content, level of compaction); site surveying; lot line location; drainage; utilities location; signage design; security; lighting design, engineering and modeling; computer generated models; colored or artist quality renderings; and construction cost estimates.

D. Landscape Architect agrees to provide its professional services in accordance with generally accepted standards of its profession.

### **Article 2 Client's Responsibilities**

A. Client agrees to provide Landscape Architect with all information, as built landscape plans, site survey and topography and existing site vegetation surveys, reports, and professional recommendations and any other related items requested by Landscape Architect in order to provide its professional services. Landscape Architect may rely on the accuracy and completeness of these items.

B. If relevant to this project Client shall furnish the services of the following consultants: Planner, Surveyor, Architect, Irrigation Engineer, Structural Engineer, Civil Engineer, Mechanical Engineer and Electrical Engineer.

C. Client agrees to advise Landscape Architect of any known or suspected contaminants at the Project site. Client shall be solely responsible for all subsurface soil conditions.

D. Client will obtain and pay for all necessary permits from authorities with jurisdiction over the Project.

E. Client agrees to provide the items described in Article 2.A and to render decisions in a timely manner so as not to delay the orderly and sequential progress of Landscape Architect's services.

### **Article 3 Estimated Schedule**

A. Landscape Architect shall render its services as expeditiously as is consistent with professional skill and care ordinarily exercised by the members of the same profession currently practicing under similar circumstances. During the course of the Project, anticipated and unanticipated events may impact any Project schedule.

- B. As of the date of this Agreement, Client's landscape construction budget is one hundred fifty thousand dollars (\$150,000.00). Client agrees to promptly notify Landscape Architect if Client's schedule or budget changes. Client acknowledges that significant changes to the Project or construction schedule or budget, or to the Project's scope may require Additional Services of Landscape Architect.

#### **Article 4 Compensation and Payments**

- A. Basic Services: Basic Services will be at the hourly rate of \$150 for Landscape Architect and \$100 for Landscape Designer/CAD Technician. This contract is a Lump Sum Contract in the amount of thirteen thousand dollars (\$13,000) in the following phases:
- |                               |  |
|-------------------------------|--|
| 1. Schematic Design           | \$5200   |
| 2. Construction Documentation | \$4800 (See Article 1 A.2 Includes Maintenance Guidelines) |
| 3. Bidding and Negotiation    | \$600  |
| 4. Project Administration     | <u>\$2400</u>  |
| Total                         | \$13,000   |
- B. Additional Services: The fees for additional services requested by the Client will be at the hourly rate of \$150 for the Landscape Architect and \$100 for the Landscape Designer/CAD Technician. The amount of the additional services fees must be agreed upon in writing by the Client and Landscape Architect prior to the start of any additional services.
- C. Reimbursable Expenses are subject to a multiple of 1.15% and include, but are not limited to: reproduction, postage, and handling of documents; long distance and facsimile charges; authorized travel; and Client requested color renderings and models. Reimbursable expenses are not to exceed \$2000 without prior approval of the Client.
- D. Landscape Architect shall bill Client for Basic Services, Additional Services and Reimbursable Expenses once a month. The amount of each monthly invoice shall be determined on the percentage of completion method whereby Landscape Architect will estimate the percentage of the total work accomplished during the invoicing period. Such invoices shall be due and payable by the Client upon receipt and are past due fifteen (15) days from invoice date. If Client defaults on such payment, Client agrees to pay all costs of collection, including reasonable attorney's fees, regardless of whether legal action is initiated. An amount equal to 1.5% of unpaid balance per month will be charged on all amounts due commencing forty-five (45) days after invoice date. Work on project by Landscape Architect may be suspended until all invoices are paid in full.

#### **Article 5 Termination**

- A. Either Client or Landscape Architect may terminate this Agreement upon seven days written notice.
- B. If terminated, Client agrees to pay Landscape Architect for all Basic and Additional Services rendered and Reimbursable Expenses incurred up to the date of termination.
- C. Upon not less than seven days' written notice, Landscape Architect may suspend the performance of its services if Client fails to pay Landscape Architect in full for services rendered or expenses incurred. Landscape Architect shall have no liability because of such suspension of services or termination due to Client's nonpayment.

#### **Article 6 Dispute Resolution**

- A. Client and Landscape Architect agree to mediate claims or disputes arising out of or relating to this Agreement before initiating litigation. The mediation shall be conducted by a mediation service acceptable to the parties. A party shall make a demand for mediation within a reasonable time after a claim or dispute arises, and the parties agree to mediate in good faith. In no event shall any demand for mediation be made after such claim or dispute would be barred by applicable law. Mediation fees shall be shared equally.

#### **Article 7 Use and Ownership of Landscape Architect's Documents**

- A. Upon the parties signing this Agreement, Landscape Architect grants Client a nonexclusive license to use Landscape Architect's documents as described in this Agreement, provided Client performs in accordance with the terms of this Agreement. No other license is implied or granted under this Agreement. All instruments of professional service prepared by Landscape Architect, including but not limited to, drawings and specifications, are the property of Client. These documents shall not be reused on other projects without Landscape Architect's written permission. Landscape Architect retains all rights, including copyrights, in its documents.

Client or others cannot use Landscape Architect's documents to complete this Project with others unless Landscape Architect is found to have materially breached this Agreement.

#### **Article 8 Miscellaneous Provisions**

- A. This Agreement is governed by the law of Landscape Architect's principal place of business.
- B. This Agreement is the entire and integrated agreement between Client and Landscape Architect and supersedes all prior negotiations, statements or agreements, either written or oral. The parties may amend this Agreement only by a written instrument signed by both Client and Landscape Architect.
- C. In the event that any term or provision of this Agreement is found to be unenforceable or invalid for any reason, the remainder of this Agreement shall continue in full force and effect, and the parties agree that any unenforceable or invalid term or provision shall be amended to the minimum extent required to make such term or provision enforceable and valid.
- D. Neither Client nor Landscape Architect shall assign this Agreement without the written consent of the other.
- E. Irrespective of any other term in this Agreement, Landscape Architect shall not control or be responsible for construction means, methods, techniques, schedules, sequences or procedures; or for construction safety or any other related programs; or for another parties' errors or omissions or for another parties' failure to complete their work or services in accordance with Landscape Architect's documents.
- F. Client agrees to indemnify, defend and hold Landscape Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees and all legal expenses and fees incurred through appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entities on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of the Project and/or this Agreement, except that the Landscape Architect shall not be entitled to be indemnified to the extent such damages or losses are found by a court or forum of competent jurisdiction to be caused by Landscape Architect's negligent errors or omissions.
- G. Client and Landscape Architect waive consequential damages for any claims, disputes or other matters in question arising out of or relating to this Agreement. Landscape Architect's waiver of consequential damages, however, is contingent upon the Client requiring contractor and its subcontractors to waive all consequential damages against Landscape Architect for claims, disputes or other matters in question arising out of or relating to the Project.
- H. To the extent damages are covered by property insurance during construction, Client and Landscape Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for such damages. Client or Landscape Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties described in this paragraph.
- I. Client acknowledges and agrees that proper Project maintenance is required after the Project is complete. A lack of or improper maintenance in areas such as, but not limited to, sidewalks, stairs and ramps may result in damage to property or persons. Client further acknowledges and agrees that, as between the parties to this Agreement, Client is solely responsible for the results of any lack of or improper maintenance.
- J. Client hereby acknowledges that Landscape Architect does not warrant any estimates provided to Client of probable landscape construction costs or operating costs. Any such estimates are made on a good faith basis but may vary from actual expenditures, which Client agrees to assume the risk of such variance.
- K. Nothing in this Agreement shall create a contractual relationship for the benefit of any third party.
- L. If this Agreement is not signed and returned to Landscape Architect within thirty (30) days, the offer to perform the described services may, in Landscape Architect's sole discretion, be withdrawn and be null and void.
- M. Client understands and acknowledges that the design and construction process for this Project poses certain risks to both Landscape Architect and Client. Client further understands and acknowledges that the amount of risk that Landscape Architect can accept is tied, in part, to the amount of compensation received for services rendered. Landscape Architect's fee for the services offered is based on Client's agreement to limit Landscape Architect's liability as described below. Client further acknowledges that were it not for this promise to limit Landscape Architect's liability, Landscape Architect's compensation would need to increase to address the risks posed by this Project.

Client, therefore, acknowledging its right to discuss this provision with legal counsel experienced in the design and construction process, as well as other design professionals, voluntarily agrees that, to the fullest extent permitted by law, Landscape Architect's total liability to Client for any and all injuries, claims, liabilities, losses, costs, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Landscape Architect's negligence, errors, omissions or breach of contract, shall not exceed the total compensation received by Landscape Architect under this Agreement. This limitation of liability shall apply to the Client's direct claims and Client's claims arising from third parties.

LANDSCAPE ARCHITECT

  
Elizabeth Newland

Dated

3-8-11

CLIENT

  
Title

City manager

Dated

4/8/11