

Sponsored by: Hernstadt

**CITY OF MARATHON, FLORIDA
RESOLUTION 2012-42**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, WAIVING PROCUREMENT POLICIES; AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH CONCH PROPERTY MANAGEMENT INC FOR CONSTRUCTION OF TWO CITY OF MARATHON ENTRANCE SIGNS IN AN AMOUNT NOT TO EXCEED \$41,160; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the "City") wishes to construct entrance signs as a replica of the Sombrero Lighthouse as a unique way to welcome visitors to the City;

WHEREAS, Conch Property Management Inc. (the "Contractor"), who fabricates lighthouse replicas, and their subcontractor has proposed to enter into an agreement with the City to construct a replica of Sombrero Lighthouse at both entrances to the City; and

WHEREAS, the unique services provided by the contractor are provided as a sole source, and therefore, are exempt from the City's purchasing policies and procedures.

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

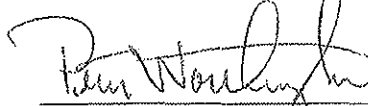
Section 1. The above recitals are true and correct and incorporated herein by this reference.

Section 2. The professional services agreement between the City and Contractor, 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 and legality by the City Attorney, is hereby approved. The City Council finds that this agreement is exempt from the competitive bidding requirements in the City's Policies and Procedures for City Employees and Officials *Regarding Purchasing*.

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 10th DAY OF APRIL, 2012.

THE CITY OF MARATHON, FLORIDA



Pete Worthington, Mayor

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

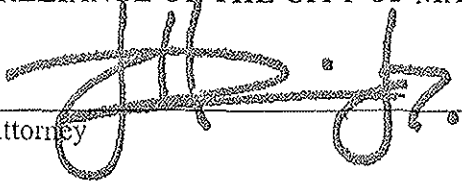
ATTEST:



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 BETWEEN
THE CITY OF MARATHON
AND
Conch Property Management. Inc.**

THIS CONTRACT is made this 20 day of April, 2012 by and between the City of Marathon, Florida (the "City") and **Conch Property Management. Inc.** (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, attached hereto as Exhibit A.

4.2. **COMPENSATION/PAYMENT**

4.2.1. Contractor shall provide the City with an invoice in accordance with the payment schedule provided in Exhibit B.

4.2.2. The City shall make payment on said invoices of approved amounts due, that are not subject to set off, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished in accordance with Exhibit B.

4.2.3. The Contractor shall be compensated at the unit prices specified in the Bid Schedule, hereto as Exhibit B, based upon the actual Work completed. The Bid is a not to exceed amount, and may be reduced based on modification to the design of the sign.

4.3. **TERM**- This Agreement shall be effective upon execution by all parties and shall continue for a term of 180 days.

4.4. **CONTRACTOR'S DUTY TO INSPECT** -The Contractor has carefully examined the described rights of way, water management areas and similar planting areas and has made sufficient tests and other investigations to fully satisfy himself as to site conditions, and he 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 his Work from damage and shall protect public and private property from injury or loss arising in connection with this 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

4.6. **PROTECTION OF PROPERTY AND THE PUBLIC-** The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this 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 erect and properly maintain at all times, all necessary safeguards, including sufficient lights and danger signals on or near the Work, from sunset to sunrise, suitable railings, barricades, or other hazards or other protective devices about unfinished work, open trenches, embankments, or other hazards and obstructions to traffic; provide all necessary security staff on the Work by day or by night for the safety of the public; and 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 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 by reason of fire, water, or construction operations, and shall take all necessary or directed steps, to protect the property. The same care shall be exercised by all Contractor's and subcontractor's employees.

4.6.4. Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to adjusting them to grade and shall be held strictly liable to the affected utility if any such appliances are disturbed, damaged or covered up during the course of the Work.

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 carry insurance as specified in the attached Exhibit C. Certificate of insurance shall be provided to the City within ten (10) days of the contract being executed.

4.7.5. 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:

Contract Agreement;

Detailed Specifications;

Insurance Certificates;

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. **VEHICLES AND EQUIPMENT** -Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Agreement. All vehicles used by Contractor to provide services under this agreement shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public. The City may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles.

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

4.13. **TERMINATION**

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

4.13.2. 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.

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

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

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

4.15. **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.

4.16. **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 Agreement for a period of three (3) years from the date of Termination.

4.17. **INSPECTION AND AUDIT**- During the term of this Agreement 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 Agreement 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.

4.18. **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.

4.19. **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 Agreement.

4.20. **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.

4.21. **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:

Conch Property Management, Inc
24 Dockside Lane
Key Largo, FL 33037

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: [Signature]

Roger T. Hernstadt, City Manager

By: [Signature]

City Attorney

CONTRACTOR

Conch Property Management, Inc.

WITNESSES:

Patti Childress

Name: Patti Childress

[Signature]
By: Larry R. Hearlth, President

EXHIBIT A

DETAILED SPECIFICATIONS

3.01 SCOPE OF WORK The City of Marathon wishes to create uniform and consistent signage for both City entrance signs. Entrance signs shall be located within FDOT right of way on Knights Key at the western City limits and on Grassy Key at the eastern City limits and shall include a solar lighting component. All signs must meet FDOT design requirements and comply with the City of Marathon's Land Development Regulations, and Florida Building Code, latest edition. The contractor shall furnish all labor, materials, supervision, equipment, supplies, tools, services, engineering, and all other necessary incidentals required to complete the fabrication and installation of the municipal signage. The City will prepare the site plan based on the engineering drawings supplied by the contractor, the FDOT application and submit and process the same through FDOT. Contractor shall provide the necessary assistance and revisions to the structural plan as may be required by FDOT including Maintenance of Traffic (MOT) documentation.

3.02 SPECIFICATIONS

A. City entrance signs located within FDOT right of way at the City limits on Knights Key to the west and Grassy Key to the east shall be constructed in the following manner and include all material needed for installation by the City:

- The signs shall be fabricated as specified in the attached Exhibit B Proposal
- The contractor shall provide the city with signed and sealed plans which shall include structural drawings that show appropriate breakaway features as required by FDOT and meet all requirements of the Florida Building Code including but not limited to the latest wind load requirements. Base of sign will have to accommodate slope of grade. The contractor must provide a warranty for the product and installation for 36 months after date of completion.
- The contractor shall provide the city with signed and sealed plans which shall include structural drawings that show appropriate breakaway features as required by FDOT and meet all requirements of the Florida Building Code including but not limited to a wind load of 155 mph.

EXHIBIT B

Conch Property Management, Inc
 PMB 373
 24 Dockside Lane
 Key Largo, FL 33037

Proposal

Proposal Date: 3/2/2012
 Proposal #: 2
 Project:

Bill To:
 City of Marathon

Description	Est. Hours/Qty.	Rate	Total
Fabricate two 12'-14" high steel replicas of Sombrero Lighthouse to be powder-coated and have brackets attached where needed for signage. Signs must be attached to the front of the lighthouses to meet engineering and wind-load requirements.	1	23,000.00	23,000.00
-1) Provide and install concrete pads using existing sign pole bases as foundations. 2) Install lighthouses on new pads using frangible couplings. 3) Provide and install solar lighting. 4) Provide engineering. **Price is subject to FDOT approval of foundation/install design. ***FDOT approval to be provided by City Staff. ****Price does not include permit fees.	1	13,000.00	13,000.00
HDU Entrance sign for Marathon - 21.7" by 95" single side High Density Urethane, sandblasted and painted - "Welcome to Marathon". Price may change depending on final design.	2	2,380.00	4,760.00
To deliver and mount on concrete slab.	1	400.00	400.00
	1	0.00	0.00
	1	0.00	0.00
25% down, 25% after lighthouses are fabricated, balance upon completion.			
Total			\$41,160.00

EXHIBIT C
INSURANCE REQUIREMENTS

CONTRACTOR shall provide or cause to be provided the following insurance and shall also ensure that the following insurance language shall be included in the Subcontractor Contracts. Prior to commencement of Work, certificates of insurance shall be provided evidencing CONTRACTOR's and its Subcontractor's compliance with these insurance requirements; provided, however, builder's risk insurance shall not be required unless and until the Work commences. Without limiting any of the other obligations or liabilities of CONTRACTOR and the Subcontractors, the CONTRACTOR and each Subcontractor shall provide, pay for, and maintain in force until all of the Work is completed and accepted by the CITY (or for such duration as otherwise specified hereinafter), the insurance coverages set forth herein.

1. Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:
 - (a) Employers' Liability with a limit of One Million Dollars (\$1,000,000) each accident.
 - (b) If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

2. Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability with respect to CONTRACTOR, and One Million Dollars (\$1,000,000) with per occurrence respect to Subcontractors, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
 - (a) Premises and/or Operations;
 - (b) Independent Contractors;
 - (c) Products and/or Completed Operations for contracts over Fifty Thousand Dollars (\$50,000.00) CONTRACTOR shall maintain in force until at least three (3) years after completion of all work required under the Agreement, coverage for Products and Completed Operations, including Broad Form Property Damage;
 - (d) Explosion, Collapse and Underground Coverages;
 - (e) Broad Form Property Damage;
 - (f) Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement;

(g) Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability; and

(h) CITY and CONTRACTOR are to be expressly included as "Additional Insureds" with respect to liability arising out of operations performed for CITY and CONTRACTOR by or on behalf of CONTRACTOR and Subcontractors or acts or omissions of CITY or CONTRACTOR in connection with general supervision of such operation.

3. Umbrella Liability, general aggregate of One Million Dollars (\$1,000,000).

4. Business Automobile Liability with minimum limits of Three Hundred Thousand Dollars (\$300,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
 - (a) Owned Vehicles.
 - (b) Hired and Non-Owned Vehicles.

5. Builder's Risk Insurance for the construction of above ground buildings and/or structures is required. The coverage shall be "All Risk" form for One Hundred Percent of the completed value, including CITY and CONTRACTOR as named insureds, with a deductible of not more than Twenty-five Thousand Dollars (\$25,000) each claim.
 - (a) Waiver of Occupancy Clause or Warranty-Policy must be specifically endorsed to eliminate any "occupancy clause" or similar warranty or representation that the building(s), addition(s) or structure(s) in the course of construction shall not be occupied without specific endorsement of the policy. The policy must be endorsed to provide that the Builder's Risk Coverage will continue to apply until the Substantial Completion Date.
 - (b) When the buildings or structures are located within an identified special flood hazard area, flood insurance must be afforded for the lesser of the total insurable value of such buildings or structures, or, the maximum amount of flood insurance coverage available under the National Flood Program.

All required insurance shall be evidenced by valid and enforceable policies issued by a company licensed to do business in the State of Florida and otherwise acceptable to the CITY. The CONTRACTOR shall not cancel (or permit any lapse under) any policy of required insurance. Each policy of required insurance shall: (i) contain the agreement of the insurer that the insurer shall not cancel or materially alter the same without thirty (30) days' prior written notice to CITY except in the case of non-payment by the CONTRACTOR for which ten (10) days' prior written notice will be provided to CITY; (ii) provide for third party vicarious liability; (iii) delete the insured versus insured exclusion with respect to claims brought by the CITY; and (iv) be effective for a period from the date of this Agreement through at least one (1) year after completion of the Work provided hereunder, except for professional liability insurance which shall be effective for a period from the date of this Agreement through at least five (5) years after completion of the Work provided hereunder and builder's risk insurance which shall be effective through Substantial Completion. Insurance shall be provided to the CITY at the times required by Section 16.5 of the General Conditions at which time the CONTRACTOR shall deliver to CITY a certificate of insurance naming CITY as an additional insured as required hereunder for each policy of required insurance except for professional liability insurance. The minimum coverage and time periods specified above are not intended, and shall not be construed, to limit any liability of the CONTRACTOR to CITY under this Contract Documents. Neither party shall be liable to the other for loss or damage covered by insurance to the extent that insurance proceeds are actually available with respect to such loss or damage and to the extent that the applicable policies of such insurance include the waiver or subrogation (which the parties shall obtain if available without additional premium). CONTRACTOR is responsible for the payment of all deductibles in connection with any claims made under the insurance policies required by the Contract Documents. The cost of deductibles paid by CONTRACTOR