

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-19**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE RANKING AND RECOMMENDATION OF THE CITY'S EVALUATION TEAM OF THE COMMUNITY PARK SOCCER FIELD REFURBISHMENT RFP; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH THE TOP RANKED FIRM XGD SYSTEMS, LLC IN THE AMOUNT OF \$118,500.00; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the "City") published a Request for Proposals (RFP) for re-sodding the soccer fields at Community Park (the "Project"); and

WHEREAS, the City Manager established an "Evaluation Team" consisting of City Staff to review, evaluate and rank proposal packages in accordance with the RFP criteria; and

WHEREAS, the City received four (4) timely responses to the RFP which were subsequently reviewed and evaluated by the City's Evaluation Team; and

WHEREAS, the City evaluation team recommends that the Council authorize the City Manager to enter into a contract with XGD Systems, LLC, the highest ranked firm with a proposal of \$118,500.00.

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

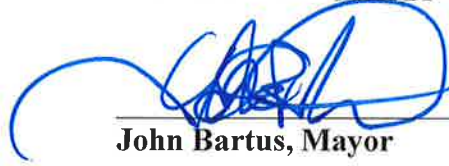
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council accepts the City's Evaluation Team ranking and authorizes the City Manager to enter into a contract with the top ranked submittal from XGD Systems LLC. in the amount of \$118,500, 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 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 26TH DAY OF FEBRUARY, 2019.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Zieg, Cook, Senmartin, Gonzalez, Bartus
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:



David Migut, City Attorney

**SECTION 3
CONTRACT FOR
SOCCER FIELDS REFURBISHMENT**

THIS CONTRACT is made this 7th day of March, 2019 by and between the City of Marathon, Florida (the "City") and XGD Systems, LLC (the "Contractor").

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

1. **SCOPE OF WORK**- The Contractor shall furnish all permitted drawings, labor, materials, supervision, equipment, supplies, and incidentals required to perform the "Scope of Work," as Described in **Exhibit A**.

2. **COMPENSATION/PAYMENT**-

Contractor shall provide the City with an invoice on a monthly basis within ten (10) days of the end of each month stating the services provided in the preceding month.

Lien Releases must be provided for all subcontractors and a general final release from subcontractors and general contractor.

10% of Contract amount may be paid for mobilization. The City shall make payment on said invoices of approved amounts due, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished.

The Contractor shall be compensated at the unit prices specified in Schedule of Values based upon the actual Work completed for the month.

3. **TERM**- This Contract shall be effective upon execution by both parties. The project shall be completed within forty five (45) days after issuance of the Notice To Proceed.

4. **CONTRACTOR'S DUTY TO INSPECT**- The Contractor has carefully examined the areas for the Work contemplated in Section 4 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 property damaged by the Contractor.

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 Contract.

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:

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.

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.

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.

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.

7. INDEMNIFICATION-

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.

This indemnification obligation shall survive the termination of this Contract.

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

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.

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

Request for Proposal
Instructions to Respondents;
All Addendums;
Contract Agreement;
Proposal;
Scope of Work/Specifications;
Qualification Statement;
Insurance Certificates; and
Bonds.
Local Preference Ordinance

9. **CONTRACTOR'S EMPLOYEES-**

The Contractor shall at all times have a competent supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall serve the public in a courteous, helpful, and impartial manner.

Contractor's employees shall wear a clean uniform that provides identification of both the Contractor's company and the name of the employee.

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

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

The same care shall be exercised by all Contractor's and subcontractor's employees.

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 Contract. All vehicles used by Contractor to provide services under this Contract 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 Manager may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles.

11. **INSURANCE**

The Contractor shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the City against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers, and naming the City as an additional insured. Any insurance maintained by the City shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include a minimum of:

| INSURANCE REQUIREMENTS | | STATUTORY LIMIT |
|-------------------------------|-----|--|
| Worker's Compensation | WC3 | Statutory Limit |
| General Liability | GL3 | \$500,000 per Person; \$1,000,000 per Occurrence; \$300,000 Property Damage or \$1,000,000 Combined Single Limit |
| Vehicle Liability | VL3 | \$500,000 per Person; \$1,000,000 per Occurrence; \$300,000 Property Damage or \$500,000,000 Combined Single Limit |

12. **COMPREHENSIVE AUTOMOBILE AND VEHICLE LIABILITY INSURANCE:**

This insurance shall be written in comprehensive form and shall protect the Contractor and the City against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

13. **COMMERCIAL GENERAL LIABILITY.**

This insurance shall be written in comprehensive form and shall protect the Contractor and the City against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent

contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

14. **CERTIFICATE OF INSURANCE:** Contractor shall provide the City Manager with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the type of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The City reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. 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. Acceptance of the Certificate(s) is subject to approval of the City Manager.

15. **ADDITIONAL INSURED** - The City is to be specifically included as an Additional Insured for the liability of the City resulting from operations performed by or on behalf of Contractor in performance of this Contract. Contractor's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

All deductibles or self-insured retentions must be declared to and be approved by the City Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

16. **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 subcontractor to perform its duties under this Contract without prior written approval of the City Manager. This Contract may only be amended by the parties with the same formalities as this Contract.

17. **TERMINATION-**

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

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.

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.

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

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

19. LIQUIDATED DAMAGES. City and contractor recognize that time is of the essence in this contract and that the city will suffer financial loss if the work is not completed within the contract times specified in section 3.3 for the work above, plus any approved extensions thereof allowed in accordance with the general conditions. The contractor also recognizes that the damages which the city will incur if the work is not substantially completed on time and/or fully completed on time are not readily ascertainable at the time this agreement is entered into, and the contractor recognizes the difficulties involved in proving the actual loss suffered by city if the work is not substantially completed on time and/or fully completed on time. Accordingly, liquidated damages shall be imposed at **\$500.00** per day for any days beyond the stated contract time.

20. ATTORNEY'S FEES- in the event either party to this contract is required to retain legal counsel to enforce any of its rights under this contract, 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.

21. ACCESS TO PUBLIC RECORDS- All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

The "CONTRACTOR" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the CONTRACTOR or keep and maintain public records required by the City to perform the service. If the CONTRACTOR transfers all public records to the City upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.

Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.

Should the CONTRACTOR assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the CONTRACTOR.

The CONTRACTOR consents to the City’s enforcement of the CONTRACTOR’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the CONTRACTOR shall pay all court costs and reasonable attorney’s fees incurred by the City.

The CONTRACTOR’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the CONTRACTOR shall be grounds for immediate unilateral cancellation of this Agreement by the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, CITYCLERK@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.

22. 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.

23. 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.

24. 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.

25. 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.

26. **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:

FOR CITY: City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
ATTN: City Manager
Phone 305-289-4130

WITH COPY TO: David Migut, City Attorney
9805 Overseas Highway
Marathon, Florida 33050
Phone: 305-289-4103

FOR CONTRACTOR: XGD Systems LLC
145 NW Flagler Ave Unit 302
Stuart, FL 34994
Phone 772-286-3419

IN WITNESS WHEREOF the parties hereto have executed this Contract on the day and date first above written.

Attest:

By: D. Clavier
Diane Clavier, City Clerk

CITY OF MARATHON
By: Chuck Lindsey
Chuck Lindsey, City Manager

By: David Migut
David Migut, City Attorney

CONTRACTOR*
By: [Signature]
As to Contractor:

Witness:

By: Bone Hill

By: Geoff Corlett

(*) 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.

EXHIBIT A

SCOPE OF WORK/SPECIFICATIONS

The Scope of Work shall include, but not limited to, all work shown, listed and specified. The contractor is required to provide a complete job.

The Scope of Work consists of Soccer Fields Refurbishment as listed below in the City of Marathon. This includes all necessary work for complete refurbishment on large and small soccer fields at Marathon Community Park as delineated below.

1. All work to be completed on two soccer fields and adjacent areas at Marathon Community Park which will be approximately 150,000 ft².
2. Complete two rounds of killing existing turf, remove and dispose of turf.
3. Roll and apply one application of fertilizer.
4. Rototill existing sub grades.
5. Finish grade original sub base with laser.
6. Furnish, deliver and install Celebration Bermuda Sod Rolls to Community Park. Sod must be 100% weed free.
7. Provide maintenance and fertilizer schedule for proper maintenance of turf.
8. All work to be completed between April 1, 2019 and May 1, 2019.

Note: There is an existing irrigation system which will have to be accommodated for the refurbishment. Soccer fields will be closed during refurbishment.

ALL WORK SHALL BE WARRANTIED WITH A ONE YEAR WARRANTY

A conflict resolution team shall be instituted with three members. A City of Marathon representative, a representative of the contractor and a third person agreed on by the other two members. All conflicts over warranty shall be determined by the conflict resolution team.

EXHIBIT B

| Description | Qty | Rate | Total |
|---|-------------------|---------------|---------------------|
| a) Spray Round Up (two rounds) b) Remove existing turf. c) Dispose | 150,000 SF | \$0.05 | \$7,500.00 |
| Roll and apply one application of fertilizer | 150,000 SF | \$0.02 | \$3,000.00 |
| Rototill existing sub grades | 150,000 SF | \$0.03 | \$4,500.00 |
| Finish grade original sub base with laser | 150,000 SF | \$0.10 | \$15,000.00 |
| Deliver and Install Celebration Bermuda Sod Rolls | 150,000 SF | \$0.59 | \$88,500.00 |
| Total | | | \$118,500.00 |