

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2015-53**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE FIRST AMENDMENT TO THE CONTRACT WITH CARLOS RIVERO PLUMBING & SEPTIC TANK CONTRACTOR, INC., FOR SLUDGE REMOVAL SERVICES PREVIOUSLY APPROVED BY RESOLUTION 2014-58 DATED JUNE 10, 2014; INCREASING THE CONTRACT AMOUNT FROM \$29,279 TO \$64,279; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, pursuant to Resolution 2014-58, the City and Carlos Rivero Plumbing & Septic Tank Contractor, Inc. (Carlos Rivero Plumbing), entered into a Contract for Sludge Removal Services (“Contract”). A copy of the Contract is attached hereto as Exhibit “1” and incorporated by this reference; and

**WHEREAS**, additional funding is required for unanticipated sludge hauling from the City’s Area 3 wastewater treatment facility, for which the services are unforeseen and not originally anticipated at the time the Contract was entered into, and requires additional services; and

**WHEREAS**, the City and Carlos Rivero Plumbing desire to amend the Contract as set forth herein to increase the total contract amount by \$35,000, from \$29,279 to \$64,279.

**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 Amendment to the Contract attached as Exhibit “A” is hereby approved 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 approved. The City Manager is authorized to execute the Amendment on behalf of the City and expend budgeted funds for the services set forth in the Contract and Amendment herein.

**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 May, 2015.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Chris Bull, Mayor**

AYES: Keating, Kelly, Senmartin, Zieg, Bull  
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

**FIRST AMENDMENT  
TO CONTRACT BETWEEN THE CITY OF MARATHON, FLORIDA  
AND CARLOS RIVERO PLUMBING & SEPTIC TANK CONTRACTOR, INC.**

This First Amendment to the Contract made and entered into this 26<sup>th</sup> day of May, 2015, by and between the City of Marathon, Florida, a municipal corporation of the State of Florida ("City") and CARLOS RIVERO PLUMBING & SEPTIC TANK CONTRACTOR, a Florida corporation, for SLUDGE REMOVAL SERVICES. (The Contractor).

**WHEREAS**, pursuant to Resolution 2014-58 the City and the Contractor, entered into a Contract for SLUDGE REMOVAL SERVICES ("Contract"). A copy of the Contract is attached hereto as Exhibit "1" and incorporated by this reference; and

**WHEREAS**, the City has need for additional, unanticipated, sludge removal services at the original per gallon rate.

**WHEREAS**, the City and the Contractor desire to amend the Contract as set forth herein to increase the total contract amount from \$ \$29,279 to \$ 64,279.

**NOW THEREFORE**, in consideration of the mutual covenants set forth in this First Amendment, the parties agree as follows:<sup>1</sup>

**Section 1. Amendment to Article 2 of the Contract.** The parties hereby amend Article 2.2 of the Contract to read as follows:

**Article 2. Compensation/Payment**

2.2 The Contractor shall be compensated at the unit prices specified on Attachment "2" at a per gallon rate, based upon the actual Work completed for the month, for a total contract amount of \$ 29,279. **Hereby amended to \$ 64,279**. Contractor shall not be compensated for Work not performed.

**[SIGNATURES ON FOLLOWING PAGE]**

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<sup>1</sup> / Additions to existing text are shown by underline, and deletions are shown as ~~strikethrough~~.

**EXCEPT AS PROVIDED HEREIN**, all other terms and conditions of the Agreement dated June 10, 2014, remain in force and effect.

**WITNESSES:**

*Margaret Riley*  
Print Name: Margaret Riley

**COMPANY NAME, INC.**

*Carlos Rivero Plumbers + Septic Tank Contractors, Inc*

By: *Javier Rivero*  
Print Name: Javier Rivero  
Title: President

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**THE CITY OF MARATHON, FLORIDA**

*Michael H. Puto*  
Michael H. Puto, City Manager

**ATTEST:**

*Diane Clavier*  
Diane Clavier, City Clerk

(City Seal)

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

*[Signature]*  
City Attorney

Sponsored by: Puto

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2014-58**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AWARDBG BID FOR SLUDGE REMOVAL SERVICES TO CARLOS RIVERO PLUMBING & SEPTIC TANK CONTRACTOR, INC., AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER; APPROVING CONTRACT IN THE AMOUNT OF \$29,758; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACTS FOR SUCH SERVICES AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon (the "City") issued an Invitation To Bid (ITB) for Sludge Hauling Services for operating and maintaining the City's Wastewater Facilities on April 5, 2014, with sealed bids opened on April 30, 2014; and

**WHEREAS**, Carlos Rivero Plumbing & Septic Contractor, Inc., submitted the lowest responsive and responsible overall bid for sludge removal services bid items 1 through 4 in the amount of \$29,758 in response to the City's ITB; and

**WHEREAS**, the City Council desires to award a contract in Exhibit "A" for sludge removal services to Carlos Rivero Plumbing & Septic Tank Contractor required for the operation of the City's Wastewater facilities.

**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 are incorporated herein.

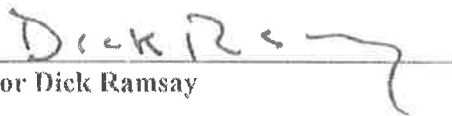
**Section 2.** The City Council hereby awards the overall Bid to and approves prime contract in Exhibit "A" for Carlos Rivero Plumbing & Septic Contractor, Inc. for sludge removal services in the amount of \$29,758.00.

**Section 3.** The City Manager is authorized to execute Contracts with these Contractors under the terms set forth in the ITB.

**Section 4.** This resolution shall take effect immediately upon its adoption.


**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida, this 10<sup>th</sup> day of June, 2014.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Mayor Dick Ramsay

AYES: Bartus, Bull, Keating, Senmartin, Ramsay  
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

## SLUDGE REMOVAL SERVICES CONTRACT

THIS CONTRACT (the "Contract") is dated this 10<sup>th</sup> day of June by and between the CITY OF MARATHON, FLORIDA (hereinafter called the "CITY") and Carlos Rivera Plumbing and Septic Tank Contractor, Inc. (hereinafter called "Contractor") located at: 10360 SW 34<sup>th</sup> Street, Miami, Florida 33165.

## Recitals

The City and Contractor in consideration of the mutual covenants hereinafter set forth, and subject to the terms and conditions herein stated, the parties agree as follows:

Article 1. Scope of Work. This Contract includes the terms of the Invitation to Bid ("ITB") issued on April 5, 2014, a copy of which is attached hereto and incorporated herein as Attachment "1". The Contractor shall furnish all Work as specified in the Contract Documents and ITB. The work is generally described as Sludge Removal Services.

Article 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.

2.1 Contractor shall submit copies of all receipts and other documentation supporting lawful disposal of sludge / cake for each deposit. Contractor shall provide City the name and location of the final destination and disposal facility prior to commencement of Work and within five (5) calendar days of any changes. The City shall be provided with copies of receipts from the disposal facility for each deposit.

2.2 The Contractor shall be compensated at the unit prices specified on Attachment "2" at a per gallon rate, based upon the actual Work completed for the month, for a total contract amount of \$29,279. Contractor shall not be compensated for Work not performed.

2.3 The City shall make payment of 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.

Article 3. Term. This Contract shall be effective upon execution by both parties. This Contract shall remain in effect for two (2) years from the date of execution unless terminated earlier in accordance with this Contract. The City Manager may, at his/her sole option, extend this Contract on the same terms and conditions for two additional one year term extensions by written notice delivered at least sixty (60) days prior to termination of this Contract.

Article 4. Contractor's Responsibilities. The Contractor has carefully examined the Scope of Work; the area for the Work contemplated on the invitation to Bid and has made sufficient investigations to fully satisfy himself as to site conditions, and assumes full responsibility for all related Scope of Work.

4.1 The Contractor shall maintain applicable license(s) and provide City with all license renewals within ten (10) calendar days of expiration date.

4.2 The Contractor shall maintain registration with the City Building Department and renew registration as applicable.

4.3 Contractor shall secure and pay for all permits, fees, licenses, and inspections necessary for the execution of the Work. Upon termination of this Contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.

4.4 The Contractor hereby certifies its capability of performing all required Work including clean-up from City premises in a neat and timely manner immediately following completion of Work. Contractor agrees to leave City premises in the same or better condition as provided. The Contractor agrees that the Work shall be performed in such a manner as to provide a minimum of inconvenience and odors to any neighboring community residing in the area. Any debris or other material spilled shall be immediately removed, cleaned and treated with hydrated lime or other method including the area and surrounding area acceptable to the City. Each wastewater facility shall be cleaned daily to the satisfaction of the City.

4.5 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 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.

4.7 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 federal, state and local laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract.

4.8 The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights, protective devices and danger signals on or near the Work, signage, barricades, or indication of other hazards and obstructions to traffic, and take all



necessary precautions to prevent accidents and injuries to persons or property on or near the Work.

4.9 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 sludge, and shall take all necessary or directed steps, to protect all property. The same care shall be exercised by all Contractor's and subcontractor's employees.

4.10 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 impacting and shall be held strictly liable to the affected utility if any such appurtenances are disturbed, damaged or covered up during the course of the Work.

4.11 Contractor agrees that all Work must be performed for hours as requested by the City.

Article 5. 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.

5.1 Contractor's employees shall respond to the public in a courteous, helpful, and impartial manner.

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

5.3 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.

Article 6. 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.

*Article 7. 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.

7.1 Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts as specified herein.

7.2 A Certificate(s) of Insurance shall be provided to show the City of Marathon, Florida as a certificate holder and the certificate shall be provided to the City at the time of execution of the Contract. Insurance shall be underwritten by a firm qualified to do business in the State of Florida.

7.3 Contractor shall provide copy of commercial driver's license(s) for personnel that will be responsible for transportation for equipment provided herein. Copies of any changes in personnel shall be supplied to the City within three (3) calendar days.

7.4 Contractor shall provide copies of certificates of insurance for Comprehensive General Liability and Business Automobile Liability insurance with limits as follows:

- a. Comprehensive general liability insurance with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- b. Business Automobile Liability with minimum limits of \$1,000,000.00 per person, per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability each. 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 Owned Vehicles, Hired and Non-Owned Vehicles and Employers' Non-Ownership.
- c. Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws.
- d. Contractors Pollution Liability Insurance with minimum limits of \$1,000,000.00 per person, per occurrence, to cover operations and any resulting pollution incidents.

Article 8. 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 types 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.

Article 9. 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.

9.1 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.

Article 10. 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.

Article 11. 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.

Article 12. Indemnification. Contractor hereby agrees to indemnify, defend and hold harmless the City, and City's officers and employees from liabilities, damages, losses and costs (including, but not limited to, reasonable attorney's fees at any level) on account of or relating to the Work, the bid, any resulting contract or acts related thereto, and whether caused in whole or part by the negligence or fault of City, or otherwise.

12.1 The provisions of this INDEMNIFICATION are solely for the benefit of the Contractor and City and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

12.2 This indemnification obligation shall survive the termination of this Contract.

Article 13. Access to Public Records. The Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes. The City shall have the right to immediately terminate this contract for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Contract for a period of three (3) years from the date of Termination.

Article 14. Inspection and Audit. During the term of this Contract and for three (3) years from the date of Termination, 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.

Article 15. No Assignment. Contractor shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of the City Manager. Any such assignment without prior approval shall be void ab initio.

Article 16. Applicable Law. Contractor shall be solely responsible for and shall comply with all federal, state and local laws regarding the Work required hereunder.

Article 17. Termination. Either party may terminate this Contract without cause upon 30 days written notice to the other party.

17.1 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.

17.2 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.

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

Article 18. Choice of Law. This Contract shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County. This Contract and all actions thereunder shall in all respects be governed by and interpreted and enforced pursuant to the laws of the State of Florida. Any suit arising out of this Contract shall be brought in Monroe County, Middle Keys Division, Florida or U.S. Southern District Court.

Article 19. Waiver of Jury Trial and Venue. The City and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or

counterclaim based upon this Contract and arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

Article 20. Attorneys' Fees. If either the City or Contractor is required to enforce the terms of this Contract by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees together with court costs incurred in any litigation at any trial and appellate proceedings.

Article 21. Severability. Should any provision, paragraph, sentence, word, or phrase contained in this document be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, and the remainder shall remain unmodified and in full force and effect.

Article 22. 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.

Article 23. 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 Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-0033  
Facsimile: (305) 289-4123

For Contractor:

Name / Title  
Firm  
Address  
City, State  
Zip  
Telephone:  
Facsimile:

JAVIER RIVERO President  
Carlos Rivero Plumbing & Septic Tank Cont. Inc  
14360 SW 34 ST  
MIAMI, FL 33165  
786-402-3092  
786-409-7270

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

Attest:

CITY OF MARATHON

By: Diane Clavier  
Diane Clavier, City Clerk

By: Michael H. Puto 6/25/14 *on 6/25/14*  
Michael H. Puto, City Manager

By: [Signature]  
City Attorney

FOR CONTRACTOR

Signed, sealed and witnessed in the presence of:

By: [Signature]  
Witness

As to Contractor:

By: [Signature]  
President

STATE OF FLORIDA }  
COUNTY OF MONROE } ss:

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of June, 2014 by JAVIER RIVERO. He/she is [ ] personally known to me or [X] who has produced R160 420 15-1720 as identification.



[Signature]  
Notary Public, State of Florida  
Printed name of notary public: Bertha A. Palma

Commission #: EE 844117  
(SEAL)



(\* 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.