

**CITY OF MARATHON, FLORIDA
RESOLUTION 2013-04**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE SOLE RESPONSIVE AND RESPONSIBLE PROPOSAL AND APPROVING A CONTRACT BETWEEN THE CITY AND EASTMAN AGGREGATE ENTERPRISES, LLC; IN AN AMOUNT NOT TO EXCEED \$277,172.50 FOR SEAWEED REMOVAL AND SAND RENOURISHMENT SERVICES AT COCO PLUM BEACH AND SOMBRERO BEACH; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND APPROPRIATE FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the “City”) solicited Request for Proposal (the “RFP”) for seaweed removal and sand re-nourishment at Coco Plum Beach and Sombrero Beach (the “Project”); and

WHEREAS, the sole RFP response was received from Eastman Aggregate Enterprises, LLC (the “Contractor”) in an amount not to exceed \$277,172.50 for the Project, and staff subsequently reviewed and determined the RFP response was responsive and responsible; and

WHEREAS, the City Council finds that accepting the RFP response and entering into a contract for the Project with the Contractor is in the best interest of the City.

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 Contract between the City and Contractor for the Project in an amount not to exceed \$277,172.50, a copy of which is attached hereto 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 Manager is authorized to execute the Contract and expend budgeted funds on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8th DAY OF JANUARY, 2013.

THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

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

ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney

CONTRACT

THIS CONTRACT is made this 8th day of January, 2013 by and between the City of Marathon, Florida (the "City") and Eastman Aggregate Enterprises, LLC (the "Contractor").

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

- 4.1. **SCOPE OF WORK** -The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals required to perform the scope of work as defined in Request for Proposal:

Seaweed Removal and Sand Renourishment Services at Coco Plum and Sombrero Beaches.

4.2. **COMPENSATION/PAYMENT**

4.2.1. 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.

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.

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

- 4.3. **TERM**- This Agreement shall be effective upon execution and shall terminate ~~at the end of hurricane season 2012.~~ TBD due to FDEP Permit.

- 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 him self 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 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 be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract. Contractor shall secure and pay for all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.

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

Instructions to Proposers;
All Addendums;
Contract Agreement;
Request For Proposal Document;
Proposal;
Detailed Specifications (by proposer);
Qualification Statement;
Insurance Certificates;
Licenses;

4.9. **CONTRACTOR' S EMPLOYEES**

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

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

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

4.10. **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.

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

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

4.11.2. Comprehensive and General Liability Insurance shall be provided with a limit of \$1,000,000.00 each:

a. Comprehensive Auto Liability Insurance shall be provided with a limit of \$500,000.00 and the City shall be named as an additional insured.

b. Contractual Liability Insurance. The City shall be named as additional insured.

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

4.11.4. At the time of execution of this Agreement, the Contractor will file with the City certificates of such insurance that are acceptable to the City. These certificates shall contain a provision that the coverage afforded under the policies will not be

canceled or materially changed until at least thirty (30) days prior written notice has been given to the City.

4.12. **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 1 19, Florida Statutes. The City shall have the right to immediately terminate this contract for the refusal by the Contractor to comply with Chapter 1 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:

Eastman Aggregate Enterprises, LLC

3705 Bellevue Avenue

Lake Worth, FL 33461

Attn: Bernie Eastman

EXECUTION:

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]

City Manager

By: [Signature]

City Attorney

Signed, sealed and witnessed in the presence of As to Contractor:

presence of:

By: [Signature]

Bernard Eastman, MC/RM

By: _____

(*) 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 - INSURANCE REQUIREMENTS

The selected firm(s) shall maintain all insurance required under this Article, such insurance being subject to the approval by the City.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The selected firm(s) shall furnish original Certificates of Insurance to the City prior to the commencement of work. The Certificates shall clearly indicate that the selected firm(s) has obtained insurance of the type, amount and classification as required for strict compliance with this Exhibit and that no material change or cancellation of the insurance shall be effective without providing thirty (30) days prior written notice to the City.

*All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the Selected firm(s), shall specifically include the City as an "Additional Named Insured."

The Selected firm(s) shall submit a certificate evidencing the above named coverage in a form satisfactory to the City prior to submitting an agreement for approval. Any insurance written on a claims-made basis is subject to approval of the City Legal Counsel. Insurance coverage in the minimum amounts set forth shall not be construed to relieve the Selected firm(s) of liability in excess of such coverage, nor shall it preclude the City from taking such other actions as are available to it under any other provisions of the law.

COVERAGE	LIMITS OF LIABILITY	DESCRIPTION
Commercial General Liability*	Bodily Injury, Including Wrongful Death: <ul style="list-style-type: none"> • \$1,000,000 per occurrence Property Damage: <ul style="list-style-type: none"> • \$1,000,000 per occurrence 	To protect the selected firm(s) and City from claims for damages for bodily injury, including wrongful death, as well as from claims of property damage arising from such operations by the selected firm(s) or by anyone directly employed by or contracting with the selected firm(s). <i>Insurance certificate shall indicate "per occurrence."</i>
Commercial Automobile Liability Insurance*	Bodily Injury, Including Wrongful Death: <ul style="list-style-type: none"> • \$500,000 per occurrence Property Damage: <ul style="list-style-type: none"> • \$500,000 per occurrence 	To protect the selected firm(s) and City, as an additional named insured, from claims for damages for bodily injury, including death as well as from claims for property damage, which may arise from the ownership, use or maintenance of owned and non-owned automobiles whether such operations be by the selected firm(s) or by anyone directly or indirectly employed by the selected firm(s).
Workers' Compensation and Employers' Liability	Statutory	