

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-41**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AWARDED CONTRACT FOR THE CONSTRUCTION OF THE MARATHON MARINA DINGHY DOCK PROJECT TO SHORELINE FOUNDATION, INC.; APPROVING CONTRACT IN THE AMOUNT OF \$413,307.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon (the "City") issued an Invitation to Bid (ITB) for the Marathon Marina Dinghy Dock Project (the "Project"); and

**WHEREAS**, the lowest bid for services was received from Shoreline Foundation, Inc. in the amount of \$413,307 and was found to be responsive; and

**WHEREAS**, staff has reviewed the bid response package and has determined that the package submitted by the apparent low bidder, Shoreline Foundation Inc. meets the criteria for responsiveness and responsibility. As such, it is staff's opinion that Shoreline Foundation, Inc. is the lowest cost, responsive and responsible bidder and has the necessary construction capabilities to satisfactorily complete the Project within the contract time frames.

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

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

**Section 2.** The Project Agreement 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 sign the Project Agreement 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 14<sup>th</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
John Bartus, Mayor

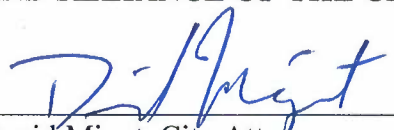
AYES: Cook, Gonzalez, Senmartin, Zieg, Bartus  
NOES: None  
ABSENT: None  
ABSTAIN: None

**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:**

  
\_\_\_\_\_  
David Migut, City Attorney

**AGREEMENT BETWEEN  
THE CITY OF MARATHON**

**AND  
SHORELINE FOUNDATION, INC.**

**For  
Marathon Marina Dinghy Dock Project**

**THIS AGREEMENT** is made between the City of Marathon, Florida, a Florida municipal corporation whose address and principal place of business is 9805 Overseas Highway, Marathon, Florida 33050, (hereinafter the “City”) and **Shoreline Foundation, Inc.** a Florida corporation whose address and principal place of business is: 2781 SW 56<sup>th</sup> Ave., Pembroke Park, FL 33023, (hereinafter the “Contractor”), and

**WHEREAS**, the City desires to engage the Contractor to provide construction services as specified below (the “Work”).

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Contractor and the City agree as follows.

**1. Scope of Services/Deliverables.**

- (a) The Contractor shall provide the Work at the unit prices of specified in **Exhibit “A” Marathon Marina Dinghy Dock Project** attached to this Agreement, and made a part hereof by this reference. Contractor shall be responsible for supplying all apparatus, equipment, labor, materials, means of transport, services and tools incidental or necessary to complete the Work as described in the Bid Documents.

**2. Term/Commencement Date and Liquidated Damages.**

- (a) Unless specified otherwise in **Exhibit “A”** the Contractor shall not commence work until the City issues Contractor a written Notice to Proceed and the Work shall be substantially completed within **(90)** calendar days after the date specified in the Notice to Proceed (“Substantial Completion”), and fully completed and ready for final payment in accordance with the Agreement Documents within **(120)** calendar days after the date specified in the Notice to Proceed (“Final Completion”). The City Manager may extend the term of this Agreement up to an additional fifteen (15) days at his sole discretion based upon the recommendation of the City’s Community Services Director, City Engineer or Utilities Director.
- (b) Contractor agrees that time is of the essence and Contractor shall complete each deliverable for the Work within the timeframes set forth in **Exhibit “A”**, unless extended by the City Manager. The City shall issue a written notice identifying the date the Work is deemed fully complete which shall be the Final Completion date.

- (c) 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 herein, plus any approved extensions thereof allowed by the City. 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, instead of requiring any such proof, City and Contractor agree that as liquidated damages to compensate the City, and not as a penalty for delay or as an incentive to complete on time, Contractor shall pay City (\$250.00) for each calendar day that expires after the time specified for Substantial Completion of the Work. After Substantial Completion, if Contractor fails to fully complete the Work within the time specified for Final Completion and readiness for final payment or any proper extension thereof granted by City, Contractor shall pay City (\$250.00) for each calendar day that expires after the time specified for Final Completion and readiness for final payment. Contractor agrees that the liquidated damage amounts specified herein bear a reasonable relationship to the actual damages to be suffered due to public inconvenience and damage to the City's reputation if the Contractor fails to substantially complete and/or fully complete the Work on time. The liquidated damages are not in compensation for any other damages, and expressly exclude damages for completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that may be incurred if the Work is not substantially completed on time and/or fully completed on time. All liquidated damages amounts will continue to be charged if the Contractor abandons the Work, or is terminated, and the Work is completed by another party.
- (d) Should the Substantial Completion and/or Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set above because of lack of performance by the Contractor, it is understood and agreed that aside from any liquidated damages, the Contractor shall be liable to the City for all actual additional costs and/or losses incurred by the City including, but not limited to, completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that incurred because the Work was not substantially completed on time and/or fully completed on time.
- (e) Monies due to the City for liquidated damages and/or actual damages shall be deducted from any monies due the Contractor, or if no money is due or the amount due is insufficient to cover the amount charged, the Contractor shall be liable for said amount.

### **3. Compensation and Payment.**

- (a) For the purpose of developing the values to be paid on a monthly basis, Contractor shall submit a Schedule of Values to be reviewed and approved by the City as indicated in **Exhibit A**, within 10 days of the end of each month. This Schedule of Values shall

constitute the values of each unit completed within the period payment is being requested.

- (b) The Contractor shall invoice the City on a monthly basis. All invoices shall provide a detailed statement of the Work performed by Contractor for the period of time covered by the invoice. Contractor shall use the form attached hereto as **Exhibit "B,"** or such other form as may be provided by City from time to time, which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Agreement Documents. The City will withhold 10% of each Pay Application as retainage which shall be paid upon Final Completion of the Work.
- (c) Each application for partial payment shall include partial lien/bond releases from all subcontractors and suppliers and a sworn statement by Contractor that partial payments received from City for the Work have been applied by Contractor to discharge in full all of Contractor's obligations, including payments to subcontractors and suppliers, stated in prior applications for payment. If payment has been withheld from a subcontractor and/or supplier the sworn statement shall state the reasons for the nonpayment. All partial payment requests shall be accompanied by consents of surety for each subcontractor and supplier.
- (d) The final application for payment shall be accompanied by all documentation called for in the Agreement Documents, together with complete and legally effective releases and/or waivers (satisfactory to City) of all liens and claims arising out of or in connection with the Work and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a sub-tier release, Contractor shall provide the City with a sworn written explanation for why the subcontractor or supplier has not been paid. The City may require the Contractor to provide security to ensure all disputed and/or undisputed amounts owed are paid; or withhold the disputed and/or undisputed amounts owed from the final payment until such time as the final releases and consents of surety for each subcontractor and supplier.
- (e) The City shall pay Contractor in accordance with the Florida Prompt Payment Act. When the Contractor believes the Work is substantially complete, the Contractor shall notify the City and within 15 calendar days the parties shall create and review a single draft punch list of items to be completed in order for the Work to be fully complete. The City shall review the draft punch list and within 5 days of being provided with the draft punch list, the City shall provide the Contractor with the Final Punch list of work to be completed for the Work to be deemed fully complete.
- (f) If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Contractor the undisputed portion of the invoice. Upon written request of the Finance Director, the Contractor shall provide

written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

- (g) All payments shall only be from appropriations budgeted on an annual basis.

4. **Subcontractors.**

- (a) The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Work.
- (b) Any subcontractors used on the Work must have the prior written approval of the City Manager and be properly licensed and insured in the same amounts as the Contractor.

5. **City's Responsibilities.**

- (a) Upon request, if available, the City shall furnish maps, plans, studies, reports and other information regarding anticipated field conditions readily available and in the City's possession.
- (b) The City shall arrange for access to and make all provisions for Contractor to enter upon real property as required for Contractor to inspect the site and perform the Work as may be requested in writing by the Contractor.

6. **Contractor's Responsibilities.**

- (a) Contractor shall exercise the same degree of care, skill and diligence in the performance of the Work as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Work, it is determined that the Contractor's deliverables are incorrect, defective or fail to conform to the Scope of Work or perform as intended, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the Work.
- (b) Contractor and its subcontractors shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall develop and maintain all necessary safeguards for such safety and protection, and shall comply with all requirements of **Attachment A**. Contractor shall notify owners of adjacent public and private property and of underground facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be immediately remedied by Contractor. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and the City has made final payment to Contractor.

- (c) On a daily basis during the course of the Work, Contractor shall maintain the site free of debris and dust so as to minimize any inconvenience to surrounding properties. Upon completion of the Work, Contractor shall remove all apparatus, debris, equipment, materials, and tools created or used to construct the Work, and except for the Work or as otherwise directed by the City return the site in the same condition as at the beginning of the Work.
- (d) If the Work will create any obstructions, road closures or traffic impacts, Contractor shall provide the City and surrounding property owners with no less than seventy-two (72) hours prior notice of the anticipated or planned obstructions, road closures or traffic impacts.
- e) Permits: Unless otherwise provided, Contractor shall obtain and pay for all construction permits and licenses. The City shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for prosecution of the work.

**7. Termination.**

- (a) The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Contractor, or immediately with cause.
- (b) Unless directed otherwise in writing by the City Manager, upon receipt of the City's written notice of intent to terminate or notice of actual termination, Contractor shall stop the Work.
- (c) In the event of termination by the City, the Contractor shall be paid for all Work accepted by the City Manager up to the date of termination.
- (d) The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data properly indexed and labeled pertaining to the Work to the City, in a hard copy and/or electronic format (as specified by the City) within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

**8. Insurance.**

The Contractor shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverage shall include a minimum of:

- (a) Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law. Contractors with Worker's Compensation exemption shall not hold City liable for employee injury or claims.
- (b) Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability as stated below:

- a. Bodily Injury:
  - 1) \$2,000,000 Each Person
  - 2) \$2,000,000 Each Occurrence
- b. Property Damage:
  - 1) \$2,000,000 Each Occurrence, or
  - 2) A combined single limit of \$2,000,000.

© Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than stated below:

Commercial General Liability (ISO Form CG 00 01)

- a. Bodily Injury (including completed operations and products liability):
  - 1) \$2,000,000 Each Occurrence
  - 2) \$2,000,000 Annual Aggregate
- b. Property Damage:
  - 1) \$2,000,000 Each Occurrence
  - 2) \$2,000,000 Annual Aggregate,
  - 3) or a combined single limit of \$2,000,000
- c. Property Damage liability insurance will provide Explosion, Collapse and Underground coverage where applicable.
- d. Personal Injury, with employment exclusion deleted: \$2,000,000 Annual Aggregate

(d) The Contractor will add the City as an additional named insured on all insurance policies applicable to the Work under this Agreement. Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Certificates of Insurance shall include the City as additional named insured. 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.

9. **Nondiscrimination.**

- (a) During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

10. **Agreement Documents.**

The Agreement Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference shall become a part of the Agreement as though physically attached as a part thereof:

Change Orders

Agreement

Exhibits to the Agreement

Bid Documents (Addendum, Invitation to Bid/RFQ, Instructions to Bidders/Proposers,



Proposal Form provided by Contractor, Notice of Award and Notice to Proceed);

**CONTRACTOR AGREES THAT THERE IS NO IMPLIED OR EXPRESS WARRANTY OF CONSTRUCTABILITY WITH REGARD TO THE WORK OR DESIGN ENCOMPASSED BY THE AGREEMENT DOCUMENTS.**

**11. Attorneys' Fees and Waiver of Jury Trial.**

- (a) If either the City or Contractor is required to enforce the terms of the Agreement by court proceedings or otherwise, whether or not formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level.
- (b) In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

**12. Indemnification.**

- (a) General Indemnity. Contractor shall indemnify and hold harmless the City, its officers, and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential, including, but not limited to, fees and charges of engineers, architects, attorney's, consultants and other professionals and trial and appellate court and arbitration costs arising out of or resulting from the performance of the Work, excluding claims arising from the sole negligence of City. Such indemnification shall specifically include but not be limited to claims, damages, losses and expenses arising out of or resulting from (i) any and all bodily injuries, sickness, death, disease; (ii) injury to or destruction of real property or tangible personal property, be it publicly or privately owned, including the loss of use resulting therefrom; (iii) other such damages, liabilities or losses received or sustained by any person or persons during or on account of any operations connected with the construction of the Work including the warranty period; (iv) the use of any improper materials; (v) any construction defect including patent defects; (vi) any act or omission of Contractor or his Subcontractors, agents, servants or employees; (vii) the violation of any federal, state, county or City laws, ordinances or regulations by Contractor, his Subcontractors, agents, servants or employees; (viii) the breach or alleged breach by Contractor of any term of this Agreement, including the breach or alleged breach of any warranty or guarantee.
- (b) Defense. In the event that any claims are brought or actions are filed against the City that are encompassed by the Contractor's duty to indemnify as stated in this Agreement, the Contractor agrees to defend against all claims and actions brought against the City regardless of whether such claims or actions are rightfully or wrongfully brought or filed. City reserves the right to select its own legal counsel to conduct any defense in any such proceedings and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of

Contractor.

- (c) Specific Indemnity. Contractor shall indemnify and hold harmless the City for liability for damages to persons or property caused in whole or in part by any act, omission, or default of the City, its officers, directors, agents, or employees arising from the Agreement or its performance. Such indemnification shall not include claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the City or its officers, directors, agents or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Contractor or any of the Contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. The extent of the indemnification shall be limited to \$5,000,000 which the parties agree bears a reasonable commercial relationship to the contract. The monetary limitation on the extent of the indemnification provided to the City shall not be less than \$1 million per occurrence.
- (d) Payment of Losses. Contractor shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever, excluding only those in which the damages arose out of the sole negligence of City, in connection with the foregoing indemnifications, including, but not limited to, reasonable attorney's fees and costs to defend all claims or suits in the name of City when applicable.
- (e) Contractor's indemnification shall not be limited to the amount of comprehensive general liability insurance which Contractor is required to obtain under the Agreement. Nothing contained herein is intended nor shall it be construed to waive City's rights and immunities under the common law or Section 768.28 *Florida Statutes*, as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this Section and its subparts.
- (f) The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives**

- (a) Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Charles Lindsey  
City Manager  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

With a Copy to: David Migut  
City Attorney  
City of Marathon, Florida  
9805 Overseas Highway  
Marathon, Florida 33050

For The Contractor: James Royo, President  
Shoreline Foundation, Inc.  
2781 SW 56<sup>th</sup> Avenue  
Pembroke Park, FL 33023  
(954) 985-0460 Phone  
(954) 985-0462 Fax

**14. Governing Law.**

- (a) This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Federal Southern District of Florida.

**15. Entire Agreement/Modification/Amendment.**

- (a) This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. The following, by reference, shall be considered part of this contract.

- Bid Documents for Marathon Marina Dingy Dock Projects
- All Addendums
- Contract Agreement
- Proposal
- Plans titled "Marathon Marina Floating Docks Reconstruction"
- Change Orders
- Exhibits to this contract
- Any Federal, State, and local permits
- General Conditions
- Field Directives

- Payment and Performance Bonds

(b) No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document. This Agreement may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof via a written Change Order, in the form attached hereto as **Exhibit “C,”** or such other form as may be provided by City from time to time.

**16. Ownership and Access to Records and Audits.**

16.1 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.

16.2 The Consultant is a “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 Consultant 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 Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant 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.

16.3 “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.

16.4 Should the Consultant 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 Consultant.

16.5 The Consultant consents to the City’s enforcement of the Consultant’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction,

whereupon the Consultant shall pay all court costs and reasonable attorney's fees incurred by the City.

16.6 The Consultant'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 Consultant shall be grounds for immediate unilateral cancellation of this Agreement by the City.

**16.7 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.**

**Nonassignability.**

- (a) This Agreement shall not be assignable by Contractor unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Contractor, and such firm's familiarity with the City's area, circumstances, and desires.

**17. Severability.**

- (a) If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

**18. Independent Contractor.**

- (a) The Contractor and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

**19. Compliance with Laws.**

- (a) The Contractor shall ensure that it, and all its subcontractors (at all tiers), comply with all federal, state and local applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Work.

**20. Waiver.**

- (a) The failure of the City to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

**21. Survival of Provisions.**

- (a) Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

**22. Prohibition of Contingency Fees.**

- (a) The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

**23. Counterparts.**

- (a) This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

**24. Authorization to Sign Agreement.**

- (a) The execution and delivery of this Agreement by Contractor is within Contractor's capacity and all requisite action has been taken to make this Agreement valid and binding on Contractor in accordance with its terms.

**25. Non-Exclusive Agreement.**

- (a) The services to be provided by the Contractor pursuant to this Agreement shall be non-exclusive and nothing herein shall preclude the City from engaging other firms to perform the same or similar services for the benefit of the City as determined in its sole and absolute discretion.

**26. Performance and Payment Bonds.**

- (a) Prior to commencing the Work identified in **Exhibit "A,"** the Contractor shall deliver to the City Performance and Payment Bonds in the form attached hereto as **Exhibit "D"** securing its obligations to be performed for the Work. Each Bond shall be in an amount equal to the contract price for the Work. The Performance

and Payment Bonds will cease to be effective on the date of the City's final payment for the Work. Effective immediately thereafter, Contractor shall provide a Maintenance Bond for the one year warranty period commencing on the date of the City's final payment for the Work in the amount of one hundred twenty five percent (125%) of the Work price.

- (b) City may deem this Section "Not Applicable" as provided on the Instructions to Bid for the Work.

**27. Continuing the Work.**

- (a) Unless directed otherwise in writing by the City Manager, Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with City.

**28. Changes In The Work.**

- (a) Without invalidating the Agreement and without notice to any surety, City may, at any time or from time-to-time, order additions, deletions, or revisions in the Work by a Written Amendment or Change Order. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved.
- (b) The Contract Price may only be changed by a written Change Order. Any claim for an increase or decrease in the Contract Price shall be based on written notice of intent to claim delivered to the City promptly [but in no event later than three (3) business days after the first occurrence of the event giving rise to the amount of the claim]. Contractor shall deliver to the City a good faith estimate of the cost and time impacts caused by the claim causing event within seven (7) calendar days of the first occurrence of the event giving rise to the claim. Within seven (7) calendar days of the conclusion of the claim causing event, but no later than the Substantial Completion date, Contractor shall deliver to the City a full and complete written claim identifying all costs and time impacts that the Contractor believes should be paid due to the claim causing event and shall include full and final substantiation for all price and time adjustments. The City Manager will review the claim and make a decision on the request. The City Manager's decision will be final unless within seven (7) calendar days of the date of the City Manager's decision the Contractor provides the City with written notice expressly stating that the Contractor disputes the decision and intends to pursue the matter via litigation. Failure by Contractor to strictly comply with the provisions of this article will result in a waiver of the claim.

**29. Subsurface Conditions**

- (a) Information shown on the Drawings and/or indicated in the Agreement Documents as to the location of existing utilities and subsurface conditions has been prepared from the most reliable data available to the City. This information is not guaranteed,

however, and it shall be the Contractor's responsibility to determine the location, character and depth of existing utilities. The City expressly disclaims any warranty as to the underground conditions to be encountered. The Contractor should not rely on locations, condition, or quantity of subsurface structures or conditions depicted on drawings, as the locations, condition, and quantities are approximations.

**30. Compensation for Delay.**

- (a) **NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS, DISRUPTION, INTERFERENCE, OR HINDRANCE** (collectively "Delay"). Notwithstanding anything to the contrary contained in the Agreement Documents, the Contractor shall not be entitled to additional compensation for any Delay unless the Delay shall have been caused by acts constituting willful or intentional interference by the City with the Contractor's performance of the Work, and then only where such acts continue after Contractor's written notice to the City of such interference.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the respective dates under each signature. The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same; and by Contractor by and through its President, who has been duly authorized to execute same.

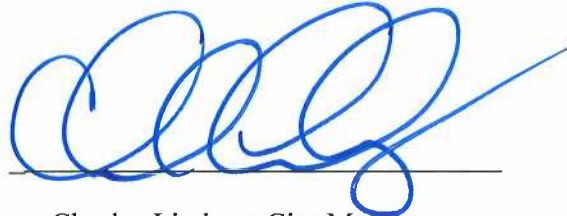
ATTEST:

CITY OF MARATHON



Diane Clavier, City Clerk

By:



Charles Lindsey, City Manager

Date:

6/10/19

APPROVED AS TO FORM AND LEGALITY FOR THE USE

AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



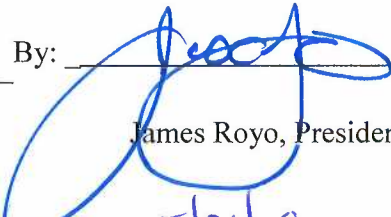
David Migut, City Attorney



  
\_\_\_\_\_

Witness

CONTRACTOR

By:   
\_\_\_\_\_

James Royo, President

Date: 5/31/19  
\_\_\_\_\_

**EXHIBIT "A"**

**SCOPE OF WORK**

**Briefly described as: The construction of this project consists of labor, materials and equipment necessary to construct a dingy dock with heavy duty brackets, gussets, tie-up cleats and access ladders, an aluminum gangway that is ADA compliant, a landing to access dinghy docks, and 12" diameter pressure treated wood pilings with durosleeve pvc wrap for the dock and landing for the City of Marathon. All work shall be in accordance with the issued construction plans titled " Marathon Marina Floating Docks Reconstruction" and contract documents titled Marathon Marina Dingy Dock Project"**

**All sections, addendums and forms from the Bid Documents as bid on March 27, 2019 are to be included as contract documents.**

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	UNIT COST	TOTAL COST
1.01	Mobilization (not to exceed 5% of total lump sum bid)	LS	1	\$20,000.00	\$20,000.00
1.02	Bonds and Insurance	LS	1	\$27,515.00	\$27,515.00
1.03	Sediment and Erosion Control (BMPs)	LS	1	\$5,594.00	\$5,594.00
1.04	Demolition	LS	1	\$6,017.00	\$6,017.00
1.05	Surveyed As-Builts of Site improvements	LS	1	\$9,329.00	\$9,329.00
<b>2</b>	<b>Site Work</b>				
2.01	12" Ø Wood Piles w/ Durosleeve & Caps	EA	24	\$2,269.00	\$54,456.00
2.02	EZ-Dock (including all parts)	LS	1	\$245,777.00	\$245,777.00
2.03	Aluminum Gangway (including all parts)	LS	1	\$14,920.00	\$14,920.00
2.04	5000 psi hydraulic Grout	LS	1	\$8,642.00	\$8,642.00
<b>3</b>	<b>Landing</b>				
3.01	12" Ø Wood Piles w/ Durosleeve	EA	4	\$1,902.00	\$7,608.00
3.02	5000 psi hydraulic Grout	LS	1	\$4,731.00	\$4,731.00
3.03	Simpson SS316 h2.5SS Straps (Aprox. 38)	LS	1	\$508.00	\$508.00
3.04	30" x 8' Hinged Aluminum Transition Plate	LS	1	\$1,003.00	\$1,003.00
3.05	Platform Framing (including all Lumber)	LS	1	\$2,099.00	\$2,099.00
3.07	Composite Decking (Aprox. 100sf)	LS	1	\$4,439.00	\$4,439.00
3.08	NOAA Sign (installed w/ support)	LS	1	\$468.00	\$468.00
3.09	NOAA Monofilament Recycle Bin	EA	1	\$201.000	\$201.000
	<b>Total Base Bid</b>				<b>\$413,307.00</b>

**EXHIBIT "B"**  
**APPLICATION FOR PAYMENT**

**Application For Payment No. \_\_\_\_\_**

To: City of Marathon

From:

Project: Marathon Marina Dinghy Dock Project

City's Agreement No.

For Work accomplished through the date of: \_\_\_\_\_

- 
- |    |  |                 |
|----|--|-----------------|
| 1. | Original Contract Price:                                       | \$ _____        |
| 2. | Net change by Change Orders and Written Amendments (+ or -):   | \$ _____        |
| 3. | Current Contract Price (1 plus 2):                             | \$ _____        |
| 4. | Total completed and stored to date:                            | \$ _____        |
| 5. | Retainage (per Agreement):                                     |                 |
|    | _____ % of completed Work:                                     | \$ _____        |
|    | _____ % of stored material:                                    | \$ _____        |
|    | Total Retainage:   | \$ _____        |
| 6. | Total completed and stored to date less retainage (4 minus 5): | \$ _____        |
| 7. | Less previous Application for Payments:                        | \$ _____        |
| 8. | <b>DUE THIS APPLICATION (6 MINUS 7):</b>                       | <b>\$ _____</b> |

Accompanying Documentation: \_\_\_\_\_

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**Contractor's Certification:**

The undersigned Contractor certifies that (1) all previous progress payments received from City on account of Work done under the Agreement referred to above have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered 1 through \_\_\_ inclusive; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to City at time of payment free and clear of all liens, security interests and encumbrances (except such as are covered by a Bond acceptable to City indemnifying City against any such lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Agreement Documents and not defective.

\_\_\_\_\_ Contractor  
Date

By: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated \_\_\_\_\_  
\_\_\_\_\_  
City's Representative

## **APPLICATION FOR PAYMENT**

### **INSTRUCTIONS**

#### **A. GENERAL INFORMATION**

The sample form of Schedule of Values is intended as a guide only. Many projects require a more extensive form with space for numerous items, descriptions of Change Orders, identification of variable quantity adjustments, summary of materials and equipment stored at the site and other information. It is expected that a separate form will be developed by City and Contractor at the time Contractor's Schedule of Values is finalized. Note also that the format for retainage must be changed if the Agreement permits (or the law provides), and Contractor elects to deposit securities in lieu of retainage.

#### **B. COMPLETING THE FORM**

The Schedule of Values, submitted and approved, should be reproduced as appropriate in the space indicated on the Application for Payment form. Note that the cost of materials and equipment is often listed separately from the cost of installation. Also, note that each Unit Price is deemed to include Contractor's overhead and profit.

All Change Orders affecting the Contract Price should be identified and included in the Schedule of Values as required for progress payments.

The form is suitable for use in the Final Application for Payment as well as for Progress Payments; however, the required accompanying documentation is usually more extensive for final payment. All accompanying documentation should be identified in the space provided on the form.

#### **C. LEGAL REVIEW**

All accompanying documentation of a legal nature, such as lien waivers, should be reviewed by an attorney.

Application No. \_\_\_\_\_ Date: \_\_\_\_\_

ITEM	UNIT PRICE	ESTIMATED QUANTITY	SCHEDULE OF VALUES AMOUNT	QUANTITY COMPLETED	AMOUNT	%	MATERIAL STORED	AMOUNT COMPLETED AND STORED
1.	\$		\$		\$		\$	\$
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								

Marathon Marina Dinghy Docks Project  
 City of Marathon  
 Bid Documents

ITEM	UNIT PRICE	ESTIMATED QUANTITY	SCHEDULE OF VALUES AMOUNT	QUANTITY COMPLETED	AMOUNT	%	MATERIAL STORED	AMOUNT COMPLETED AND STORED
14.								
15.								
16.								
17.								
18.								
19.								
20.								
<b>TOTAL</b>			\$		\$		\$	\$

Note: Total Schedule of Values Amount should equal the current Contract Price.

**EXHIBIT "C"**  
**CHANGE ORDER**

**CHANGE ORDER NO.** \_\_\_\_\_

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**TO: City of Marathon**

**PROJECT: Marathon Marina Dinghy Dock Project**

**CONTRACTOR:**

**DATE:**

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This Change Order will authorize the following change to the Agreement:

The Work as set forth in the Agreement is hereby amended to include the items set forth on **Exhibit "1"** attached hereto and by this reference made a part hereof.

This Change Order constitutes full, final, and complete compensation to the Contractor for all costs, expenses, overhead, and profit, and any damages, and/or time adjustments of every kind that the Contractor may incur in connection with the above referenced changes in the Work, and any other effect on any of the Work under the Agreement. The Contractor acknowledges and agrees that (a) the Contract Price of \$ XXXXXX under the Agreement will be [**unchanged**] [**changed**] by this Change Order, and (b) the schedule for performance of Work will be [**unchanged**] [**changed**] by this Change Order. Contractor expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder. Any defined terms not defined in this Change Order shall have the meanings set forth in the Agreement.

By signing below the parties indicate acceptance of this Change Order as set forth herein.



CONSENT OF SURETY TO CHANGE ORDER

The Surety Agrees that this change order is not a cardinal change and if the Change Order includes an increase in the Contract amount, then the penal amount of the payment and performance bond issued for this Contract is increased by the dollar amount of this Change Order.

\_\_\_\_\_ (Seal)

Surety's Name and Corporate Seal

By: Signature and Title

Attest: Signature and Title

**City of Marathon**

**Contractor**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit "1"**

**CHANGE ORDER SUMMARY**

This Change Order is necessary to cover changes in the Work to be performed under this Agreement. Except as may be modified herein all of the provisions of the Agreement apply to and govern all Work under this Change Order.

THE FOLLOWING CHANGES ARE MADE TO THE AGREEMENT DOCUMENTS:

- (1) Original Contract Price \_\_\_\_\_
- (2) Current Contract Price (Adjusted by Previous Change Orders) \_\_\_\_\_
- (3) Total Proposed Change in Contract Price \_\_\_\_\_
- (4) New Contract Price (Item 2 + Item 3) \_\_\_\_\_
- (5) Original Contract Time \_\_\_\_\_
- (6) Proposed Change in Contract Time \_\_\_\_\_
- (7) Current Contract Time (Adjusted by Previous Change Orders) \_\_\_\_\_
- (8) Total Proposed Change in Contract Time \_\_\_\_\_
- (9) New Contract Time (Item 6 ± Item 7) \_\_\_\_\_
- (10) Original Contract Substantial Completion Date \_\_\_\_\_
- (11) New Contract Substantial Completion Date \_\_\_\_\_

CHANGE ORDER HISTORY						
Item No.	Description	Current Contract Amount	Additive Change	Deductive Change	Net Change Contract Price	Net Change Contract Time
I.	Total Contract Price	\$	\$	\$	\$	
Total					\$	

The Change Order is a result of: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The cost breakdown is as follows:

WORK ITEM DESCRIPTION	PRICE
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
TOTAL	\$

END OF SECTION

# Attachment A

COMPLIANCE WITH LAWS – The parties shall comply with all applicable local, state, and federal laws and guidelines relating to the services that are subject to this Agreement. Federal regulations apply to all of the City of Marathon contracts using Federal funds as a source for the solicitation of goods and services. The following Federal requirements apply to this Agreement:

## **I. ACCESS TO RECORDS:**

(1) The contractor agrees to provide MCSB, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

## **II. CLEAN AIR/WATER**

### Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the School Board and understands and agrees that the School Board will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the School Board and understands and agrees that the School Board will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

### **III. WORK HOURS/SAFETY STANDARDS ACT**

(1) Overtime requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation: liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages: The School Board shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

### **IV. COPELAND ANTI-KICKBACK ACT**

Contractor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Dept. of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that Contractor or its subcontractors are prohibited from inducing, by any means, any person employed in the contracted work, to give up any part of the compensation

to which he or she is otherwise entitled. The MCSB will report all suspected or reported violations to the federal awarding agency.

## **V. EQUAL EMPLOYMENT**

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting

agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **VI. DEBARMENT/SUSPENSION**

(1) This contract is a covered transaction for purposes of 2 C.F.R. part 180, and 2 C.F.R. part 3000. As such, Contractor is required to verify that none of the contractor, its principals, or its affiliates are excluded (as defined by 2 C.F.R. § 180.94) or disqualified (as defined by 2 C.F.R. § 180.935)

(2) Contractor must comply with 2 C.F.R. part 180, Subpart C and 2 C.F.R. part 3000, Subpart C, and must include a requirement to comply with these regulations in any lower tier transaction it enters into.

(3) This certification is a material representation of fact relied upon by City. If it is later determined that Contractor did not comply with the provisions enumerated in subsection 2 of this paragraph, in addition to the remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

#### **VII. BYRD ANTI-LOBBYING**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

### **VIII. FEMA FUNDING ACKNOWLEDGEMENT**

This is an acknowledgment that FEMA financial assistance will be used to fund the contract. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract. The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.