

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-90**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A SERVICE CONTRACT WITH TRANSPONDR, LLC, AUTHORIZING THE CITY MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on July 18th, the City of Marathon (the “City”) published A Request for Proposals for Emergency Communication Equipment and Services (the “Project”); and

WHEREAS, on August 20th, one bid was received by Transpondr LLC, (the “Contractor”) and City staff subsequently reviewed and determined the bid was complete and the bidder was responsive and responsible; and

WHEREAS, staff recommends the 60 month subscription term at \$1,437 per month, plus a onetime set up and activation fee of \$999. If deployed, a onetime deployment fee, depending on notice (not more than \$5,000) and a \$2,100 per day fee upon service activation request.

WHEREAS, the City finds that accepting the bid and entering into a service contract 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:

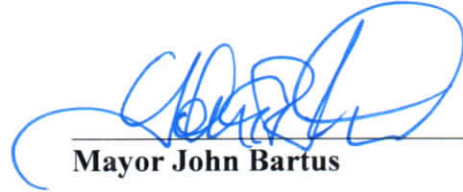
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Contract between the City and the Contractor for service, a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The City Manager is authorized to execute the 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 10TH DAY OF SEPTEMBER, 2019.

THE CITY OF MARATHON, FLORIDA



Mayor John Bartus

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
TRANSPONDR LLC
FOR DISASTER RECOVERY SERVICES**

THIS AGREEMENT is made as of this 12th day of Sept., by and between **TRANSPONDR, LLC** (hereinafter the “Contractor”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the City issued a Request for Proposals for Emergency Communication Equipment; and

WHEREAS, one proposal was received and evaluated; and

WHEREAS, on September 10, 2019 the City Council approved the proposal for Emergency Communication Equipment Services and authorized the City to execute an agreement with Transpondr LLC; and

WHEREAS, the City and the Contractor desire to enter into this Agreement whereby the duties and obligation each to the other are set forth.

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

1. **Scope of Services**

1.1 The Contractor must meet the requirements and perform the services identified in the Request for Proposal Term Contract for Emergency Communication Equipment Services published on July 18, 2019, (the “RFP”), attached hereto and made a part hereof, as Exhibit “A” and the Contractor’s Proposal, (the “Proposal”) attached hereto and made a part hereof, as Exhibit “B”.

1.2 Contractor agrees and acknowledges that Contractor is prohibited from exempting provisions of the RFP, Proposal, or in this Agreement in any of Contractor’s services pursuant to the Agreement.

2. **Term**

2.1 This Agreement shall begin on the date it is fully executed by both parties (the “Effective Date”) and shall extend for a period of five (5) years (the “Term”).

- 2.2 Execution of this contract does not guarantee the City will assign any work to the contractor. Any work assigned to the Contractor shall be at the City's own discretion. The city may assign limited scope of work and responsibility to the Contractor, and may choose to have more than one contractor perform services as determined to be in the best interest of the City.
- 2.3 After the initial five (5) year term, the City shall have the option to renew for an additional term of three (3) years, The parties hereto may extend this Agreement by mutual consent, in writing, prior to the expiration of the current term. This provision in no way limits either party's right to terminate this Agreement at any time during the initial term or any extension thereof, pursuant to Section 4 of the Agreement.
- 2.4 Contractor shall complete all services directed under this Agreement as soon as feasibly possible, and in the time necessary to accomplish the services, with the knowledge that time is of the essence. The scope and nature of the services to be performed will be directed by the City once the extent of damage has been determined. The City may impose liquidated damages of \$100.00 per day for breach of this paragraph. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the City as a consequence of such delay, and both parties desiring to obviate any questions or dispute concerning the amount of said damages and the cost and effect of the failure of the Contractor to complete the services on time.

3. **Compensation**

- 3.1 The amount of compensation payable by the City to Contractor shall be based upon the rates and fees schedules as set forth in Exhibit "C", attached hereto and made a part hereof, which amount shall be accepted by Contractor as full compensation for all such work performed under this Agreement. It is acknowledged and agreed by Contractor that these amounts are the maximum payable and constitute a limitation upon City's obligation to compensate Contractor for its services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort, upon Contractor's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services as defined in Section 4 of the Proposal.
- 3.2 Contractor may submit an invoice for compensation, developed and agreed upon by the City Manager and Contractor, no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. Invoices shall designate the nature of the

services performed and shall also show a summary of rates and fees with accrual of the total and credits for portions paid previously, and shall allocate the billing costs to the appropriate fund or combination of funds. Each statement shall show the proportion of the guaranteed maximum payment that has been expended through previous billings.

- 3.3 The City shall pay Contractor in accordance with the Florida Prompt Payment Act. Additionally, payment may be withheld by the City Manager for failure of Contractor to comply with a term, condition, or requirement of this Agreement.
- 3.4 Notwithstanding any provision of this Agreement to the contrary, the City Manager may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work of Contractor, which has not been remedied or resolved in a manner satisfactory to the City Manager. The amount withheld shall not be subject to payment of interest by the City.
- 3.5 Contractor agrees to keep such records and accounts as may be necessary, for such time period as required by Florida Statutes, in order to record complete and correct entries as to personnel hours charged for which Contractor receives reimbursement. Such books and records shall be available at all reasonable times for examination and audit by the City.
- 3.6 If it should become necessary for the City to request the Contractor to render any additional services to either supplement the services described in the RFP or to perform additional work, such additional work shall be performed only as authorized by the City Manager or designee. Any such additional work agreed to by both parties shall be performed at the same rate in the schedules included in Exhibit "C".

4. **Termination**

- 4.1 This Agreement may be terminated for cause by the City Manager if the Contractor is in breach and has not corrected the breach within sixty (60) days after written notice from the City identifying the breach, or for convenience by action of the City Council upon not less than sixty (60) days' written notice by the City Manager. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event City Manager determines that termination is necessary to protect the public health, safety, or welfare.
- 4.2 This Agreement may be terminated for cause by the Contractor if the City is in breach and has not corrected the breach within sixty (60) days after the written notice from the Contractor identifying the breach.

- 4.3 Termination of this Agreement for cause shall include but not be limited to, failure to suitably perform the services, failure to continuously perform the services in a manner calculated to meet or accomplish the objectives of the City as set forth in this Agreement or multiple breaches of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured.
- 4.4 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager which City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 4.5 In the event this Agreement is terminated for convenience, Contractor shall be paid for any services performed to the date the Agreement is terminated; however, upon being notified of City's election to terminate, Contractor shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Contractor acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by the City, the adequacy of which is hereby acknowledged by Contractor, is given as specific consideration to Contractor for the City's right to terminate this Agreement for convenience.
- 4.6 In the event this Agreement is terminated, any compensation payable by the City shall be withheld until all documents are provided to the City pursuant to Section 7.1 of this Agreement. In no event shall the City be liable to the Contractor for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

5. **Indemnification**

- 5.1 Contractor shall indemnify, hold harmless and, at the City's option, pay for an attorney selected by the City, to defend the City and any of its elected officials, officers, agents, servants, and employees from and against any and all liability, suits, actions, damages, costs, losses, and expenses, including attorneys' fees, demands and claims for personal injury, bodily injury, sickness, diseases or death or damage or destruction of tangible property, arising out of any errors, omissions, misconduct or negligent acts, errors or omissions of the Contractor, its officials, agents, employees or subcontractors in the performance of the services of the Contractor under this Agreement, whether direct or indirect and from and against any orders, judgments, or decrees which may be entered thereon and from and against all costs, damages of every kind and nature,

attorneys' fees, expenses and liabilities incurred in and about the defense of any such claim and investigation thereof.

- 5.2 Contractor shall indemnify, hold harmless and, at the City's option, pay for an attorney selected by the City, to defend the City and any of its elected officials, officers, agents, servants, and employees from and against any and all liability, suits, actions, damages, costs, losses, and expenses, including attorneys' fees, demands and claims sought by third parties related to any alleged breach of any non-competition of similar provisions.
- 5.3 Contractor shall indemnify the City and any of its elected officials, officers, agents, servants and employees, for all loss, damage, expense, or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement by Contractor of any patent, trademark, copyright, trade secret or other proprietary right relation to services furnished pursuant to this Agreement. Contractor will defend and/or settle at its own expense any action brought against the City and any of its elected officials, officers, agents, servants, and employees, to the extent that it is based on a claim that products or services furnished to the City by the Contractor pursuant to this Agreement, or if any portion of the services or goods related to the performance of the service become unusable as a result of any such infringement or claim.
- 5.4 Contractor acknowledges that specific consideration has been paid or will be paid under this Agreement for this hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and with the collateral obligation of insuring and indemnity.
- 5.5 The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager and the City Attorney, any sums due Contractor under the Agreement may be retained by the City until all of the City's claims for indemnification pursuant to the Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by the City.

6. **Insurance**

In order to insure the indemnification obligation contained above, Contractor shall, as a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement, the insurance coverages as set forth in the RFP, Exhibit "A".

7. **Miscellaneous**

- 7.1 **Ownership of Documents.** Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of the City and shall be delivered by the Contractor to the City Manager within seven (7) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until all documents are received as provided herein.
- 7.2 **Audit and Inspection Rights and Retention of Records.** The City shall have the right to audit the books, records, and accounts of the Contractor that are related to this Agreement. The Contractor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

Contractor shall preserve and make available, at reasonable times for examination and audit by the City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless Contractor is notified in writing by the City of the need to extend the retention period. Such retention of such records and documents shall be at Contractor's expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by the City to be applicable to Contractor's records, Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for the City's disallowance and recovery of any payment upon such entry.

In addition, Contractor shall respond to the reasonable inquiries of successor Contractors and allow successor Contractors to receive working papers relating to matters of continuing significance.

In addition, Contractor shall provide a complete copy of all working papers to the City prior to final payment by the City, in accordance with the RFP.

- 7.3 **Policy of Non Discrimination.** Contractor shall not discriminate against any person in its operations, activities, or delivery of services under this Agreement.

Contractor shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

- 7.4 **Public Entity Crime Act.** Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 289.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities. In addition to the foregoing, Contractor further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Contractor has been placed on the convicted vendor list.

- 7.5 **Independent Contractor.** Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees or agents of City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services

rendered under this Agreement shall be those of Contractor. This Agreement shall not constitute or make the parties a partnership or joint venture.

7.6 **Third Party Beneficiaries.** Neither Contractor nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them. Based upon this Agreement the parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

7.7 **Notices.** Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail postage prepaid return receipt requested or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

CITY:
Chuck Lindsey
City Manager
City of Marathon
9805 Overseas Highway
Marathon, FL 33050

With a copy to:
David Migut
City Attorney
9805 Overseas Highway
Marathon, FL 33050

CONTRACTOR:
Milton Flanders or Brandon Heidmann
Co-Owners
4175 Regency Park Ct.
Atlanta, GA 30341

7.8 **Assignment and Performance.** Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by Contractor, except with the prior written approval of the City Manager, which shall be in his or her sole and absolute discretion. In addition, Contractor shall not subcontract any portion of the work required by this Agreement, except

with the prior written approval of the City Manager, which shall be in his or her sole and absolute discretion. A list of all such subcontractors shall be included in the Bid. If additional subcontractors are to be used during the term of this Agreement, other than those submitted in the Bid, a list of such subcontractors shall be provided to the City Manager, subject to his or her approval.

Contractor represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the RFP and to provide and perform such services to City's satisfaction for the agreed compensation.

Contractor shall perform its duties, obligations and services under this Agreement in a skillful and respectable manner.

- 7.9 **Conflicts.** Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement.

Contractor agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude Contractor or any other person from representing themselves in any action or in any administrative or legal proceeding.

In the event Contractor is permitted to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

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

violation of this provision, City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

- 7.11 **Materiality and Waiver of Breach.** City and Contractor agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of the Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 7.12 **Compliance with Laws.** Contractor shall comply with all federal, state and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement, including, but not limited to:
- a. **Equal Employment Opportunity:** Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
 - b. **Copeland "Anti-Kickback" Act:** Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
 - c. **Davis-Bacon Act:** Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
 - d. **Contract Work Hours and Safety Standards Act:** Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
 - e. **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT:** The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Any violations thereof must and will be reported to FEMA and the Regional Office of the Environmental Protection Agency.

(1) Clean Air Act:

- a. 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.
- b. The contractor agrees to report each violation to the City and understands and agrees that the City 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.
- c. 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.

(2) Federal Water Pollution Control Act:

- a. 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.
- b. The contractor agrees to report each violation to the City and understands and agrees that the City 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.
- c. 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.

- 7.13 **Severance.** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Contractor elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 7.14 **Joint Preparation.** The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 7.15 **Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or

provision contained in Articles 1 through 7 of this Agreement shall prevail and be given effect.

- 7.16 **Applicable Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue of any action to enforce this Agreement shall be in Monroe County, Florida. The parties expressly waive all rights to trial by jury for any disputes arising from or in any way connected with this Agreement. The parties understand and agree that this waiver is a material contract term. This Agreement is not subject to arbitration.
- 7.17 **Amendments.** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement.
- 7.18 **Prior Agreements.** This Agreement and its attachments constitute the entire agreement between Contractor and City, and this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreement or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained here shall be effective unless set forth in writing in accordance with Section 7.17 above.
- 7.19 **Drug-Free Workplace.** Contractor shall maintain a drug-free workplace.
- 7.20 **Incorporation by Reference.** The truth and accuracy of each “Whereas” clause set forth above is acknowledged by the parties. The attached Exhibits are incorporated hereto and made a part of this Agreement.
- 7.21 **Multiple Originals.** This Agreement may be fully executed in two (2) copies by all parties each of which, bearing original signatures, shall have the force and effect of an original document.
- 7.22 **Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- 7.23 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is

signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

- 7.24 **Survival of Provisions.** Any terms or conditions of this Agreement that require acts beyond the date of its termination shall survive the termination of this Agreement, shall remain in full force and effect unless and until the terms of conditions are completed, and shall be fully enforceable by either party.
- 7.25 **Truth-in-Negotiation Certificate.** Signature of this Agreement by Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.
- 7.26 **DEBARMENT AND SUSPENSION:** The contractor is subject to the debarment and suspension regulations implementing Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension). A contract will not and cannot be made to parties listed in the SAM (System for Award Management) exclusions. SAM exclusions is the list maintained by the General Services Administration that contains the names of parties, debarred, suspended or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530.

(1) The bidder/contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The bidder/contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.27 **BYRD ANTI-LOBBYING AMENDMENTS** (31 U.S.C. 1352): Contractors that apply or bid for an award exceeding \$100,000 must 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 must 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 non-Federal award.

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor Transpondr LLC certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

7.28 **PUBLIC RECORDS:** Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (1) Keep and maintain public records required by the City to perform the service.
- (2) Upon request from the City's custodian of public records or designee, 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 this Agreement and following completion of this Agreement if the Contractor does not transfer the records to the City.
- (4) Upon completion of this Agreement, transfer, at no cost, to the City, all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon the completion of

this agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the Town's custodian of public records or designee, in a format that is compatible with the information technology of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT 305-743-0033, cityofmarathon@ci.marathon.fl.us, OR BY MAIL AT 9805 OVERSEAS HIGHWAY, MARATHON, FLORIDA 33050

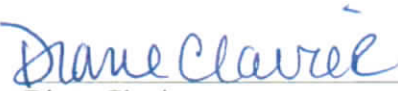
7.29 **SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:** The contractor agrees to ensure that it takes all necessary six (6) steps identified in 2 CFR 200.321 to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.


IN WITNESS WHEREOF, City and Contractor have set their hands and seals, as of the day and year first above written.

ATTEST:

CITY OF MARATHON, FLORIDA

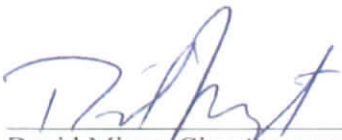


Diane Clavier
City Clerk




Charles Lindsey
City Manager

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



David Migut, City Attorney

TRANSPONDR LLC



Printed Name: Brandon Heidmann
Title: President

Lease No.: 23712
Lessee: City of Marathon FL

LESSEE'S INSTRUCTIONS
Required For Municipal Rental Transactions

In order to complete the lease transaction described above, the Lessee must complete, sign and return each of the documents identified and must attach each of the documents identified as documents to be provided by Lessee. Lessee must INITIAL ANY CHANGE ADDITION OR DELETION in any of the documents. Documents not marked are not required for this transaction.

DOCUMENTS PROVIDED BY LESSOR THAT MUST BE COMPLETED, SIGNED AND RETURNED BY LESSEE:

- MUNICIPAL RENTAL AGREEMENT: Needs to be signed by duly authorized employee of Lessee and MUST be attested to by Lessee's Clerk, Board Secretary or a person serving a similar function, with appropriate seal applied, or it may be notarized.
- ACCEPTANCE CERTIFICATE: To be signed by highest ranking official at Equipment location and attested to by the person signing the Agreement for Lessee (TWO SIGNATURES ARE REQUIRED). Date when Equipment is accepted must be inserted by Lessee.
- INCUMBENCY CERTIFICATE: Certificate identifying the person signing the Agreement for Lessee and verifying that person's authority to be the signer of Agreement and any other documents to be executed in connection therewith.

DOCUMENTS THAT MUST BE PROVIDED BY LESSEE:

- PURCHASE ORDER: Issued to Vendor. (Sample Purchase Order enclosed) MUST be written by Lessee, specifying total term of the Agreement (e.g., such as 36 months at \$126.00).
- ADVANCE PAYMENT: Invoice enclosed. Please forward, please make payable to Lessor.
- MINUTES: Shows necessary approval from (city, state, county, Tribal Council, etc.) of the transaction and to use the funds for this purpose.
- INSURANCE CERTIFICATE: As required by the Municipal Rental Agreement, please provide a Certificate of Insurance (Acord Form 27 or equivalent), naming Lessor as ADDITIONAL INSURED AND LOSS PAYEE, or letter evidencing self-insurance (if approved by Lessor).
- FINANCIAL STATEMENTS: As required by the Municipal Rental Agreement, please provide: last two (2) years of Balance Sheets and Profit & Loss Statements.

Upon execution of these documents, please make copies for your records and forward all of the ORIGINAL documents to

Government Leasing, LLC
830 Tenderfoot Hill Rd. Ste 301
Colorado Springs, CO 80906

MUNICIPAL RENTAL AGREEMENT

OWNER:	Government Leasing, LLC 830 Tenderfoot Hill Rd. Ste 301 Colorado Springs, CO 80906 (800) 822 8070	AGREEMENT NO.: 23712
RENTER:	City of Marathon 9805 Overseas Highway Marathon, FL 33050	VENDOR: Transpondr LLC 4175 Regency Park Court Atlanta, GA 30341

EQUIPMENT DESCRIPTION (make, model, serial no., and attachments – Equipment is new unless noted):

Satellite Communications System consisting of one (1) Norsat Journey Manpack 6W 0.9-meter manual point satellite antenna, one (1) iDirect IQ200 Desktop Satellite Modem iDirect IQ200 Desktop Satellite Modem, one (1) Rapid Connect Kit Silver Kit includes Pelican Storm iM2950 Ruggedized Case, Cisco Meraki Z3 Security Router w/Wifi, 5x Cisco SPA122 Analog Telephone Adapters, 10x Motorola Dect Ruggedized Waterproof Analog Cordless Phones, Spot X Satellite Messenger, and Cisco WIFI Access Point

Any additional equipment will be described in any Detailed Equipment Description Amendment that is executed and which refers to this Agreement.

Owner assumes and shall have no responsibility for performance or maintenance of Equipment. Equipment is to be insured by Renter. VENDOR IS NOT AN AGENT OF OWNER and no representative of Vendor is authorized to waive, supplement or otherwise alter any provision hereof. Maintenance and/or supplies ARE NOT included in this Agreement unless specified in the Equipment Description. Owner or assignee has a security interest in Equipment and must be notified in writing of any removal or trade-in of Equipment before full payment is made to OWNER or assignee.

EQUIPMENT LOCATION. Complete only if Equipment will not be located at Renter's address shown above.

Address	City	State	Zip
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EQUIPMENT COST – TERM – PAYMENTS

TAXES	All taxes will be the sole responsibility of Renter.
RENTAL TERM	60-months payments.
PAYMENTS	60 monthly payments in the amount of \$1,437.00 each, with the first such payment due thirty (30) days after the Lessee's written acceptance of the leased Equipment, and each remaining payment due monthly thereafter on the same day ("Rental Payments"). In addition to the first Rental Payment amount, the Lessee will pay a one time set-up fee of \$999.00. After timely making all of all 60-month Rental Payment amounts, the Renter may elect to extend the Rental Term for an additional three (3) years at a cost of \$806.00 per month.
PURCHASE OPTION AMOUNT	Renter may purchase the Equipment for its fair market value after timely making all Rental Payments.

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS PRINTED ON THE FOLLOWING PAGE, WHICH TERMS ARE MADE A PART HEREOF.

TERMS AND CONDITIONS

Owner hereby rents the Equipment to Renter for the following purposes and upon the following terms and conditions:

1. **RENTAL.** Owner hereby rents to Renter and Renter hereby rents from Owner the personal property described above in the Equipment Description and in any other schedule made a part hereof by the parties (herein called "Equipment") upon the terms and conditions set forth in this Municipal Rental Agreement (herein the "Agreement").
2. **RENEWAL TERM, RENT AND TERM.** Renewal Term(s) means the automatic renewal periods of this Agreement, each having duration of one (1) year coterminous with Renter's fiscal year except the last of such automatic renewal periods, which shall end on the anniversary of the Commencement Date. Renter shall pay Owner as rent for the use of Equipment, at the office of Owner specified above or such other place as Owner may hereafter designate, aggregate rent equal to the total number of rental payments specified above, multiplied by the amount of each payment specified above plus applicable taxes. The due date of the first rental payment is the date upon which the Equipment is delivered to Renter, or any later date designated by Owner. The security deposit is due and payable at the time of signing this Agreement. The Original Term of this Agreement shall commence on the date the Equipment is accepted by Renter and indicated on the Acceptance Certificate ("Commencement Date") and shall terminate the last day of Renter's current fiscal year. For the duration of the Rental Term, this Agreement will be automatically renewed for the next fiscal year at the end of the Original Term, and any Renewal Term, until the last anniversary of the Commencement Date. If this Agreement is terminated for non-appropriation, Renter will provide written notice and proof of non-appropriation (in the form of budget submission and rejection and/or minutes of meeting of governing body that non-appropriates funds to pay the periodic payments for the next fiscal year) to Owner not less than thirty (30) days prior to the end of the Original Term or Renewal Term then in effect of Renter's intention to terminate this Agreement pursuant to Section 24 of this Agreement as the case may be. **NOTE: THE ONLY EARLY TERMINATION PERMITTED BY THIS AGREEMENT IS TERMINATION FOR NON-APPROPRIATION AS SPECIFIED HEREIN.** All of the terms and conditions of this Agreement remain in full force and effect unless this Agreement is terminated as permitted herein. Subject to termination for nonappropriation, the obligation of Renter to make payment of rent and other payments required under this Agreement shall be absolute and unconditional in all events and are intended by the parties to be "net" of all taxes and insurance. Renter shall make all such payments when due and shall not withhold any such payments as a result of any disputes arising between or among Renter and Owner, any Vendor or any other person, nor shall Renter have the right to assert any right of set-off, reduction or deduction, defense or counterclaim against its obligation to make such payments or be entitled to any abatement of such payments as a result of accident or unforeseen circumstances or any other reason.
3. **DELIVERY AND ACCEPTANCE.** Renter agrees that it has selected both the Equipment and the Vendor prior to requesting Owner to purchase the same for leasing hereunder. Delivery and installation arrangements and costs are the sole responsibility of Renter. Owner shall not be liable for any loss or damage to Renter by reason of the Vendor's delay or failure to deliver any item of Equipment. Upon delivery of the Equipment to the location set forth above, Renter shall inspect the Equipment and if found acceptable shall accept the Equipment on the date it is ready for use. Renter's acceptance of the Equipment shall be conclusively and irrevocably evidenced by Renter signing the Acceptance Certificate. **THIS AGREEMENT SHALL BE NON-CANCELABLE FOR THE FULL RENTAL TERM, SUBJECT TO TERMINATION FOR NON-APPROPRIATION AS SPECIFIED HEREIN.** If Renter cancels or terminates this Agreement prior to delivery of the Equipment or if Renter fails or refuses to sign the Acceptance Certificate within a reasonable time, not to exceed ten (10) days, after the Equipment has been delivered, tested and ready for use, Renter shall be deemed to have cancelled this Agreement and Renter shall automatically assume all of Owner's obligations under any purchase agreement or purchase order for the Equipment and Renter agrees to indemnify and hold Owner harmless from any claims, including any demand for payment of the purchase price of the Equipment, by the manufacturer or Vendor of the Equipment.
4. **ACCEPTANCE OF AGREEMENT.** Renter acknowledges that Owner shall not become contractually bound by this Agreement until it is accepted by Owner at Owner's office specified above, that neither the Vendor nor any sales representative nor agent of Vendor is authorized to waive or alter any term or condition of this Agreement, and no representation as to the Equipment or any other matter by the Vendor shall relieve Renter of the obligation to pay rent or any other obligation under this Agreement.
5. **DISCLAIMER OF WARRANTIES.** Renter acknowledges that Owner is not the manufacturer of the Equipment, nor the manufacturer's or Vendor's agent, and Renter represents that Renter has selected the Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by or on behalf of Owner. **OWNER HAS NOT MADE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY KIND, DIRECTLY OR INDIRECTLY, EXPRESSED OR IMPLIED, WITH RESPECT TO THE SUITABILITY, DURABILITY, DESIGN, OPERATIONS OR CONDITION OF THE EQUIPMENT OR ANY PART THEREOF, ITS MERCHANTABILITY, ITS FITNESS FOR USE FOR THE PARTICULAR PURPOSES AND USES OF RENTER, OR OTHERWISE.** Owner shall not be liable to Renter for any loss, damage or expense of any kind or nature caused directly or indirectly by any Equipment rented hereunder or for any damages based on strict or absolute tort liability or Owner's negligence. **NO DEFECT OR UNFITNESS OF THE EQUIPMENT SHALL RELIEVE RENTER OF THE OBLIGATION TO PAY RENT OR ANY OTHER OBLIGATION UNDER THIS AGREEMENT.** Owner agrees, to the extent they are assignable, to assign to Renter, without recourse to Owner, any warranties received by Owner with respect to the Equipment.
6. **TITLE, PERSONAL PROPERTY.** The Equipment is and at all times shall remain the sole and exclusive personal property of Owner. No right, title or interest in the Equipment shall pass to Renter other than the right to maintain possession and use of the Equipment for the full Rental Term, conditioned upon Renter's compliance with the terms and conditions of this Agreement. If requested by Owner, Renter shall affix to or place on the Equipment plates or markings indicating Owner's ownership. Renter covenants and agrees that the Equipment is, and will at all times remain, personal property of Owner regardless of its use or the manner of its attachment to realty. Renter agrees to take such action, at its expense, as may be necessary to prevent any third party from acquiring any interest in the Equipment as a result of its attachment to realty.
7. **LOCATION, INSPECTION.** Renter shall not move the Equipment from the location noted in this Agreement without the prior written consent of Owner, which consent shall not be unreasonably withheld. Owner shall have the right from time to time during normal business hours to enter upon the premises where the Equipment is located for the purpose of confirming the existence, condition and proper maintenance of the Equipment.
8. **USE, MAINTENANCE AND REPAIR.** Renter shall use the Equipment in the manner for which it was designed and intended, solely for Renter's business purposes, in accordance with all applicable manufacturer and Vendor manuals and instructions and in compliance with all applicable laws, regulations and orders. Renter, at Renter's own cost and expense, shall keep the Equipment in good repair, condition and working order, ordinary wear and tear only excepted and shall furnish all parts, mechanisms, devices and servicing required therefore. All replacement parts and repairs at any time made to or placed upon the Equipment shall become the property of Owner. Renter may, with Owner's prior written consent, make such alterations, modifications or additions to the Equipment as Renter may deem desirable in the conduct of its business, provided the same shall not diminish the value or utility of the Equipment or cause the loss of any warranty thereon or any certification necessary for the maintenance thereof, and shall be readily removable without causing damage to the Equipment. Upon return to Owner of Equipment as to which such alterations, modifications or additions have been made, Renter shall remove the same and restore the Equipment to its original condition, reasonable wear and tear only being excepted and, if not so removed, title thereto shall automatically vest in Owner.
9. **TAXES.** Unless otherwise indicated, the rent is net of any and all taxes. Renter shall pay directly, or reimburse or pay to Owner, all license and registration fees, assessments, stamp and documentary taxes, sale and use taxes, personal property taxes, gross receipts taxes, excise taxes, ad valorem and all other taxes and charges, however designated, which may now or hereafter, during

the term of this Agreement, be imposed by any governmental body or agency upon this Agreement or the ownership, leasing, rental, sale, purchase, possession or use of the Equipment, whether assessed to Owner or Renter and whether due before or after termination of this Agreement, excluding, however, all taxes on or measured by the net income of Owner. Owner shall not be obligated to contest any valuation of or tax imposed on the Equipment or this Agreement, but may do so strictly as an accommodation to Renter and shall not be liable or accountable to Renter therefor.

10. **ADDITIONAL COVENANTS.** To the extent permitted by the laws and Constitution of the State in which Renter is located, Renter shall protect, hold harmless Owner from and against any and all liability, obligations, losses, claims and damages whatsoever regardless of cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into of this Agreement, the ownership of any item of the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment, resulting in damage to property or injury to or death to any person. The assurance arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Rental Term for any reason. Renter agrees not to withhold or abate any portion of the payments required pursuant to this Agreement by reason of any defects, malfunctions, breakdowns or infirmities of the Equipment, provided, however, that Renter shall not be required to indemnify Owner for any claims and damages caused by Owner's negligence or willful conduct.

11. **LOSS OR DAMAGE.** Renter hereby assumes and shall bear the entire risk of loss (including theft and requisition of use) or destruction of or damage to the Equipment from any and every cause whatsoever, whether or not insured, until the Equipment is returned to the location specified by Owner. No such loss or damage shall relieve Renter from any obligation under this Agreement, which shall continue in full force and effect, including but not limited to the obligations to make Rental Payments. In event of damage to or loss or destruction of the Equipment (or any item thereof), Renter shall promptly notify Owner in writing of such fact and shall, at the option of Renter, (a) place the same in good repair, condition and working order; (b) replace the Equipment with like personal property in good repair, condition and working order and transfer clear title to such replacement property to Owner, whereupon such property shall be subject to this Agreement and be deemed the Equipment for the purposes hereof; or (c) pay to Owner the total of unpaid rents for the remainder of the entire Rental Term plus the estimated fair market value of the equipment at the end of the entire Rental Term, discounted at the current rate for United States Treasury Bills having maturing at the end of the entire rental term, whereupon this Agreement shall terminate with respect thereto. Any insurance proceeds received with respect to the Equipment shall be applied, in the event option (c) is elected, in reduction of the then unpaid obligations of Renter to Owner, or, if not already paid by Renter, or, if already paid by Renter, to reimburse Renter for such payment, or, in the event option (a) or (b) is elected, to reimburse Renter for the costs of repairing, restoring or replacing the Equipment upon receipt by Owner of evidence, satisfactory to Owner, that such repair, restoration or replacement has been effected.

12. **INSURANCE.** At its own expense Renter shall cause casualty, public liability and property damage insurance to be carried and maintained, or shall demonstrate to the satisfaction of Owner that adequate self-insurance is provided with respect to the Equipment, sufficient to protect the full insurable value (meaning the original Equipment cost), and to protect Owner from liability in all events. All insurance proceeds from casualty losses shall be payable as provided herein. Renter shall furnish to Owner certificates evidencing such coverage throughout the Rental Term (Acord Form 27 or its equivalent). Alternatively, Renter may insure the Equipment under a blanket insurance policy or policies, which cover not only the Equipment but also other properties. If Renter shall insure similar properties by self-insurance, Renter will insure the Equipment by means of an adequate insurance fund. All insurance shall name Renter and Owner as insureds and loss payees as their respective interest may appear and shall provide for at least ten (10) days prior written notice by the underwriter or insurance company to the Owner in the event of modification, cancellation or expiration. Renter shall pay all deductibles.

13. **COLLECTION, EXPENSES, INTEREST AND ADVANCES.** Should Renter fail to pay any part of the rent herein reserved or any other sum required to be paid by Renter to Owner hereunder, Renter shall pay Owner interest on such delinquent payment at eighteen (18) percent per annum or the highest legal contract rate whichever is less, from the date when such payment was due until paid and the expenses of any collection agency or service employed by Owner to collect said payments. In the event Owner employs the services of any attorney to enforce any of the terms of this Agreement, Renter shall pay reasonable attorney's fees, costs and expenses so incurred by Owner. All advances made by Owner to preserve the Equipment or to pay insurance premiums for insurance thereon or to discharge and pay any taxes, liens or encumbrances thereon shall be added to the unpaid balance of rentals due hereunder and shall be repayable by Renter to Owner together with interest thereon at eighteen (18) percent per annum or the highest legal contract rate, whichever is less until paid.

14. **DEFAULT.** Any of the following events or conditions shall constitute an event of default hereunder: (a) Renter's failure to pay any rent or other sum due Owner as herein provided within ten (10) days after the due date thereof; (b) Renter's failure to observe, keep or perform any other term, covenant or condition of this Agreement and such failure continues for twenty (20) days following receipt of written notice thereof from Owner; (c) a writ of attachment of execution be levied upon the Equipment or any item thereof and is not released or satisfied within ten (10) days; (d) the filing by or against Renter of a petition under the Bankruptcy Code or any amendment thereto or under any other insolvency law providing for the relief of debtors; (e) the voluntary or involuntary making of an assignment of a substantial portion of its assets by Renter for the benefit of creditors, appointment of a receiver or trustee for Renter or for Renter's assets, commencement of any formal or informal proceeding for dissolution, liquidation, settlement of claims against or winding up of the affairs of Renter, or Renter ceases its political or corporate existence; (f) any representation or warranty made by Renter herein or in any document delivered to Owner in connection herewith shall prove to have been false or misleading in any material respect; or (g) Renter defaults under any other contract with Owner.

15. **REMEDIES.** Upon the occurrence of an event of default, Owner may exercise, at its sole discretion, any one or more of the following remedies, (a) by written notice to Renter declare the entire unpaid rent for the full Rental Term immediately due and payable, if allowed by local law, whereupon the same shall become immediately due and payable without further notice of demand; (b) proceed by appropriate court action to enforce performance by Renter of the applicable covenant or to recover damages for the breach thereof; (c) sue for and recover all rent and other payments then accrued or thereafter accruing under this Agreement; (d) terminate this Agreement by written notice to Renter, whereupon all rights of Renter in and to the Equipment shall terminate and Renter shall return the Equipment to Owner as provided in Section 17, hereof; (e) require Renter to return the Equipment and if not so returned, Owner may personally, or by its agents, and with or without legal process, enter upon the premises where the Equipment is located and repossess the Equipment free from all claims by Renter and without liability for trespass or any damages occasioned by such taking of possession, but such return or repossession of the Equipment shall not constitute a termination of this Agreement unless Owner expressly so notifies Renter in writing; (f) with respect to Equipment returned to or repossessed by Owner, and unless Owner has terminated this Agreement, Owner will sell or lease the Equipment, to such persons and upon such terms as Owner may determine, at one or more public or private sales and with or without notice to Renter, and apply the net proceeds thereof after deducting the costs and expenses of such sale or subrental, including, but not limited to, costs of repossession, transportation, storage, any necessary repairs and broker's fees, to Renter's obligations hereunder with Renter remaining liable for any deficiency and with any excess retained by Owner. (The proceeds of a subrental for all or any item of Equipment shall be the amount reasonably assigned by Owner as the rental value of such Equipment for the remainder of the Rental Term. In the event of a sale, an amount equal to the estimated fair market value of the Equipment at the end of the originally scheduled Rental Term shall be deducted to arrive at the net proceeds of such sale.); or (g) pursue any other remedy at law or in equity. Renter agrees to pay Owner all costs and expenses, including reasonable attorney's fees, costs and expenses incurred by Owner in exercising any of its rights or remedies hereunder or enforcing any of the terms and conditions of this Agreement. No right or remedy conferred upon or reserved to Owner hereunder is exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and may be enforced separately, concurrently, and from time to time.

16. **ASSIGNMENTS.** Without the prior written consent of Owner, Renter shall not sublet or lend the Equipment or otherwise assign, transfer, pledge or hypothecate this Agreement, the Equipment or any interest in this Agreement or in and to the Equipment, or permit any lien, charge or encumbrance thereon. Renter's interest herein is not assignable or transferable by operation of law. Renter will not relinquish possession and use of or abandon the Equipment to any party other than Owner. All rights of Owner in the Equipment and under this Agreement may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, without notice to Renter, but always, however subject to the rights of Renter under this Agreement. In the event of an assignment by Owner, whether as security for any of its indebtedness or otherwise, no breach or default by Owner hereunder shall excuse performance by Renter of any provision hereof, it being understood that in the event of such default or breach by Owner that Renter shall pursue any rights on account thereof solely against Owner and shall not assert against such assignee any defense, counterclaim or set-off which Renter may have against Owner. If Renter is given notice of any such assignment, Renter agrees to acknowledge receipt thereof in writing and if so directed therein, to pay directly to such assignee the rents and other sums payable hereunder so assigned. Subject to the foregoing, this Agreement inures to the benefit of and is a binding upon the legatees, personal representatives, successors and assigns of the parties hereto.

17. **RETURN OF EQUIPMENT.** Upon expiration of the Rental Term or other termination pursuant to the terms of this Agreement (except upon purchase by Renter), at the option of the Owner: (i) Renter shall immediately return the Equipment in as good a condition as received, normal wear, tear and depreciation excepted, to such place within the continental United States as is designated by Owner, or (ii) Owner shall transfer ownership of the Equipment to Renter, "as is, with all faults." If shipped, the Equipment shall be properly crated and shipped, by such reasonable means as designated by Owner, freight prepaid and properly insured; provided, however, that Owner shall reimburse Renter the excess of such freight expenses to such new location over the cost of such shipment from the then location of the Equipment to Owner's address shown herein. Such shipment shall be f.o.b. destination and the Renter shall bear all costs associated with packing and shipping. The risk of loss shall not be transferred to Owner until the equipment is received by it. Should Renter not return the Equipment at the end of the Rental Term, unless title is transferred to Renter, Renter shall continue to pay rent to Owner in the sum and on the due dates set out in this Agreement as a month to month rental until returned by Renter or until returned upon demand therefore by Owner. Owner also may recover from Renter the replacement value of Equipment not returned when due.

18. **OWNER'S PAYMENT.** In the event Renter fails to pay any taxes payable by it hereunder, or other amounts due hereunder, or to procure the insurance required, or to perform any of its obligations under this Agreement, without any obligation to do so, Owner may pay such amounts or perform such obligations. Renter shall reimburse Owner, upon demand, the amount of such payment or cost of such performance and Renter's failure to do so shall be the same as failure to pay any other payment hereunder. Renter shall pay interest on such unpaid sums as provided in Section 13 hereof.

19. **ENTIRE AGREEMENT, NON-WAIVER, AND SEVERABILITY.** This Agreement contains the entire agreement and understanding between Renter and Owner relating to the subject matter hereof. No agreements or understandings shall be binding on the parties hereto unless set forth in writing and signed by the parties. This Agreement may be executed in counterparts all of which shall constitute one and the same instrument. The counterpart bearing Owner's signature shall be the sole chattel paper original of this Agreement. Time is of the essence in this Agreement. No waiver by Owner of any breach or default shall constitute a waiver of any additional or subsequent breach or default by Owner nor shall it be a waiver of any of Owner's rights. Any provision of this Agreement, which for any reason may be held unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Agreement, and any such unenforceability in any jurisdiction shall not render unenforceable such provision in any other jurisdiction.

20. **NOTICES.** Written notices to be given hereunder shall be deemed to have been given when delivered personally or deposited in the United States mail, postage prepaid, addressed to such party at its address set forth above or at such other address as such party may have subsequently provided in writing.

21. **CHOICE OF LAW.** This Agreement shall be binding and effective only when accepted by an officer of Owner at its home office in Colorado Springs, Colorado, shall be deemed to have been made in Colorado Springs, Colorado and, except for local filing requirements, shall be governed by and construed in accordance with the laws of the State of Owner.

22. **UCC FILINGS.** Owner and Renter agree that a carbon, photographic or other reproduction of this Agreement may be filed as a security agreement and financing statement and shall be sufficient as a financing statement under the Uniform Commercial Code, where permitted by the laws and Constitution of the State. Renter agrees that Owner may sign and file financing statements on Renter's behalf and Renter shall execute or obtain and deliver to Owner, upon Owner's request, such instruments, financing statements and assurances, including without limitation waivers of interest of owners or mortgages of real estate upon which the Equipment is located, as Owner deems necessary or advisable for the confirmation, protection or perfection of this Agreement and Owner's rights hereunder and will pay all costs incident thereto. Owner may file or record a financing statement with respect to this Agreement or the Equipment. Any such execution, delivery, filing or recording shall not be deemed factors in determining whether or not this Agreement is intended to create a security interest under the Uniform Commercial Code.

23. **WARRANTY OF GOVERNMENTAL PURPOSE.** Renter hereby warrants and represents that the Equipment will be used for governmental purposes only, and not for business (profit or non-profit), personal, and family or household purposes. RENTER ACKNOWLEDGES THAT OWNER HAS RELIED UPON THIS REPRESENTATION IN ENTERING INTO THIS AGREEMENT.

24. **NON-APPROPRIATION.** The Rental Term consists of the Original Term, which is equal to the remaining fiscal year of Renter, and Renewal Terms, each equal to the then current fiscal year of the Renter except the last of such renewal periods, which shall end on the anniversary of the Commencement Date. In the event sufficient funds shall not be appropriated for the payments required to be paid in the next occurring Renewal Term, and if Renter has no funds legally available for such payments from other sources, then Renter may terminate this Agreement at the end of the Original Term or then current Renewal Term, and Renter shall not be obligated to make payment of the payments provided for in this Agreement beyond the Original Term or the then current Renewal Term. Renter agrees to deliver notice to Owner of such termination at least thirty (30) days prior to the end of the Original Term or the then current Renewal Term. However, failure to deliver such notice of non-appropriation to Owner shall not extend the term of this Agreement beyond the end of the Original Term or then current Renewal Term, if the Renter has so non-appropriated. If this Agreement is terminated under this Section due to non-appropriation, Renter agrees, at Renter's cost and expense, peaceably to deliver the Equipment to Owner at the location specified by Owner. To the extent lawful, if Renter shall

terminate this Agreement as provided in this Section, Renter shall not, for a period of ninety (90) days after the end of the then current Original Term or Renewal Term, acquire any interest in or, expend any funds for the purchase, lease, rent or use of equipment similar to the Equipment subject to this Agreement.

25. **FINANCE RENTAL.** The parties intend that the Owner shall have all benefits of a lessor under a finance lease under the uniform commercial code (UCC). Owner did not select, manufacture, or supply the leased property and only acquired it (or the right to use such leased property) in connection with this Agreement. Further, Renter acknowledges: (a) Renter received a copy of the contract by which Owner acquired the leased property before signing this Agreement, (b) Renter approved said contract as a condition of the effectiveness of this Agreement, (c) prior to signing this Agreement, Renter received a statement designating the vendor promises, warranties and limitations or modifications of remedies, or (d) prior to signing this Agreement, Renter was told that the uniform commercial code - lease, governs this transaction and that Renter may communicate directly with the vendor concerning the matters described in subsection (c) of this sentence. Renter waives any and all rights and remedies Renter may have under the UCC 2A-508 through 2A-522, including any right to: (a) cancel this Agreement; (b) reject tender of the Equipment; (c) revoke acceptance of the Equipment; (d) recover damages for any breach of warranty; and (e) make deductions or set-offs, for any reason, from amounts due us under this Agreement. If any part of this Agreement is inconsistent with UCC 2A, the terms of this Agreement will govern.

26. **PURCHASE OPTION.** Renter shall have the option to purchase all (but not less than all) of the Equipment at any time at an option purchase price equal to (i) the unpaid Rent for the remainder of the entire Term (assuming no early termination), plus (ii) the estimated fair market value of the Equipment at the end of the entire Term (assuming no early termination), with (i) and (ii) discounted to the date of payment using a discount rate equal to the rate paid on United States Treasury obligations have a similar term as of the date of initial acceptance of the Equipment by the Renter. In addition, Renter will owe all unpaid Rent through the date of payment of the purchase option price and any other amounts due hereunder, plus interest thereon at the rate of 10% per annum. These amounts shall be payable on demand. Any transfer of title to Renter upon exercise of this option shall be without any express or implied warranties from owner or its assigns. As a condition precedent to exercising this purchase option, Renter shall deliver to Owner and its assigns, a termination of any maintenance funding or disbursing obligations related to this Agreement.

INSURANCE COVERAGE REQUIREMENTS

In accordance with this Agreement either:

- We have instructed the following insurance agent: Public Risk Underwriters-P.O. Box 958455 Lake Mary, FL 32795-8455
321-832-1450 (insert name, address and telephone number)
 - All risk physical damage insurance on the Equipment reflected by an Evidence of Insurance (Acord Form 27 or equivalent) and Long Form Loss Payable Clause naming Owner designated above and/or its Assigns as an additional insured and Loss Payee, and
 - Public Liability reflected by an Evidence of Insurance (Acord Form 27 or equivalent) naming Owner and/or its assigns as an additional insured and loss payee.
- We are self-insured for all risk, physical damage, and public liability and will provide proof of such self-insurance in letterform together with a copy of the statute authorizing this form of insurance. Proof of insurance coverage will be provided to you prior to the time that the Equipment is delivered to us.

City of Marathon

Date: 10/21/19 By: [Signature] (Authorized Official)

Renter represents and warrants:

- The execution, delivery, and performance by the Renter of this Agreement has been duly authorized by all necessary action on the part of the Renter;
- Agreement constitutes a legal, valid, and binding obligation of the Renter enforceable in accordance with its terms; and
- It is the intention of the Renter to continue to rent for the full term of the Rental Agreement subject to term appropriation as discussed in Section 24.

City of Marathon

Date: 10/21/19 By: [Signature] (Authorized Official)

ACCEPTED BY:
 OWNER: Government Leasing, LLC
[Signature]
 By:
 Name: Tom Wittwer
 Title: Manager

Renter acknowledges reading and receiving a copy of this Agreement. The undersigned affirms that she/he has been duly authorized to execute this Agreement on behalf of the above-named Renter. Depending on the jurisdiction, this may be the highest elected official.
 RENTER: City of Marathon
 By: [Signature]
 Name: Charles Lindsey
 Title: City Manager
 Date: 10/21/19

AMENDMENT NUMBER 1
MUNICIPAL RENTAL AGREEMENT NO. 23712 ("AGREEMENT")
BY AND BETWEEN
GOVERNMENT LEASING, LLC (AS "OWNER")
AND City of Marathon (AS "RENTER")

The parties to the Agreement identified above have agreed to the following additions, deletions and/or modifications. Capitalized terms when used herein shall have the meaning ascribed to them in the Agreement, unless context otherwise requires or indicates. To the extent that the provisions of this Amendment conflict with, modify, or supplement the terms of the Agreement, the provisions contained in this Amendment shall prevail and control. The other terms and provisions of the Agreement shall continue to be effective. This Amendment shall be a part of the Agreement and is hereby incorporated therein.

Notwithstanding anything to the contrary in the Agreement, the Parties affirm and acknowledges that

- (a) Renter shall not have on-going possession and use of the leased Equipment until such time as the Renter requests the delivery and deployment of the Equipment from the Vendor;
- (b) the Vendor shall warehouse, maintain, and keep the leased Equipment for the exclusive use and benefit of the Renter at 4175 Regency Park Court, Atlanta, GA 30341;
- (c) the costs associated with the delivery, deployment, of the leased Equipment ("Deployment") at not included in the Rental Payment amounts described in the Agreement;
- (d) All costs associated with Deployment shall be borne by the Renter;
- (e) the Renter's obligation to make the Rental Payments in a due and timely fashion on an on-going monthly basis shall (i) commence on the Renter's execution of an Unconditional Acceptance Certificate, in a form acceptable to Lessor, and (ii) not be impaired or impeded by the any of the foregoing;
- (f) The Renter will indemnify, and hold Owner harmless, with regard to the Vendor's failure to perform in accordance with any representation, warranty, or covenant that Vendor has made, or may make, pursuant to any other agreements that Vendor may have with Renter, including, but not limited to any guarantee made with regard to Deployment. To the extent permitted by the laws and Constitution of the State in which Renter is located, Renter shall protect, hold harmless Owner from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into of this Agreement, the ownership of any item of the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person. The assurance arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Rental Term for any reason. Renter agrees not to withhold or abate any portion of the payments required pursuant to this Agreement by reason of any defects, malfunctions, breakdowns or infirmities of the Equipment, provided, however, that Renter shall not be required to indemnify Owner for any claims and damages caused by Owner's negligence or willful conduct; and
- (g) the Renter will not reduce, offset, or abate, any portion of the Rental Payment amounts, nor shall the Renter exercise its rights pursuant to Section 24 of the Agreement, due any failure on the part of the Vendor to perform in accordance with any other agreements that Vendor may have with Renter.
- (h) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- (i) **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 Owner and Vendor agree to provide Renter, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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

(3) The Owner and Vendor agree 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 Owner and Vendor agree 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 Owner and Vendor agree to report each violation to the Renter and understand and agree that the Renter 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 Owner and Vendor agree 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 Owner and Vendor agree 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 Owner and Vendor agree to report each violation to the Renter and understand and agree that the Renter 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 Owner and Vendor agree 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 therefore 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 Renter 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

Owner and Vendor 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 Owner and Vendor 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 Renter will report all suspected or reported violations to the federal awarding agency.

V. EQUAL EMPLOYMENT

During the performance of this contract, the Owner and Vendor agree as follows:

(1) The Owner and Vendor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Owner and Vendor 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 Owner and Vendor agree 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 Owner and Vendor will, in all solicitations or advertisements for employees placed by or on behalf of the Owner and Vendor, 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 Owner and Vendor 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 Owner's or Vendor's legal duty to furnish information.

(4) The Owner and Vendor 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 Owner and Vendor 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 Owner and Vendor 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 Owner or Vendor'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 Owner and/or Vendor 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 Owner and Vendor 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 Owner and Vendor 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 Owner and/or Vendor 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, Owner and Vendor are required to verify that none of 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) Owner and Vendor 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 Renter. If it is later determined that Owner or Vendor did not comply with the provisions enumerated in subsection 2 of this paragraph, in addition to the remedies available to Renter, 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 portions of this contract. The Owner and Vendor will comply will 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 Renter, Owner, Vendor, or any other party pertaining to any matter resulting from the contract. The Owner and Vendor acknowledge that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to their actions pertaining to this contract.

IX. ADDITIONAL PUBLIC RECORDS REQUIREMENT

AGREED AND ACCEPTED

LESSOR: ~~Government Leasing, LLC~~

By: 
Tom Wittwer, Manager

Date: 10/10/19

LESSEE: City of Marathon

By: 
Authorized Signature

Date: 10/21/19

Printed Name: Charles Lindsey

Title: City Manager

UNCONDITIONAL ACCEPTANCE CERTIFICATE

Madam/Sir:

In accordance with the terms of the Municipal Rental Agreement No. 23712 ("Agreement") between Government Leasing, LLC ("Owner"), and the undersigned ("Renter"), the Renter certifies, represents to, and agrees with Owner as follows:

1. Renter unconditionally accepts the Equipment covered by the Agreement for the purpose of the Agreement and agrees that all payments due under the Agreement will be made in accordance with the Payment Schedule that is part of the Agreement, even though actual delivery and installation has not occurred as of the date of this Unconditional Acceptance Certificate. Further, Renter agrees that it may not cancel or terminate any of its obligations under the Agreement due to any rejection of the Equipment or revocation of acceptance of the Equipment occurring after the date of this Unconditional Acceptance Certificate. By signing below, even though actual delivery and acceptance may not have occurred and Renter agrees that its duties to make payments commences upon execution hereof, and Renter authorizes and requests that Owner pay the Vendor, Transpondr LLC, for the Equipment \$38,119.00 upon execution of this Unconditional Acceptance Certificate.

2. Renter represents and warrants that it has selected the Equipment and has made its own decision as to the suitability of the Equipment for its needs. Renter accepts and agrees that Government Leasing, LLC as **Owner, makes no warranty or representation, either expressed or implied**, as to the performance of Equipment covered by the Agreement or its fitness for any particular purpose or application, and that Renter's payments shall not be contingent upon same. Owner did not select, manufacture or supply the Equipment and only acquired the Equipment in connection with the Agreement, and Renter knows and selected the Vendor, has any rights to any Vendor warranties concerning the Equipment, and may contact the Vendor directly with respect to any such Vendor warranties or disclaimers or limitations thereof. The Agreement is a "hell or high water" obligation of the Renter, subject only to any limitations on appropriations to the extent provided therein. Renter shall only look to the manufacturer, vendor and/or installer and not to the Owner with respect to any problems Renter has concerning the delivery, installation, or use of the equipment, including, but not limited to any claims that such equipment does not perform as represented or warranted. Any such claims shall not relieve Renter of its obligations under the Municipal Rental Agreement.

3. No Event of Default, as such term is defined in the Agreement, and no event, which with notice or lapse of time, or both, would become an Event of Default, has occurred and is continuing at the date hereof.

4. Renter represents, covenants and warrants, that if requested by Owner, Renter will deliver an Opinion of Counsel, to the effect that: (i) Renter is a fully political subdivision or agency of the State of the Equipment location; (ii) the execution, delivery and performance by the Renter of this Agreement has been duly authorized by all necessary action on the part of the Renter; and, (iii) this Agreement constitutes a legal, valid and binding obligation of the Renter enforceable in accordance with its terms.

5. Renter agrees that: (i) it will do, or cause to be done, all things necessary to preserve and keep the Agreement in full force and effect; (ii) it has complied with all approval and adoption as a valid obligation on its part; and (iii) it has, and expects to have in future periods, sufficient appropriations, or other funds, available to pay all amounts due in the fiscal period in question.

RENTER: City of Marathon

By: _____

Name: Charles Lindsey
(Signer of the Lease Agreement)

Title: City Manager

Unconditional Acceptance Date: 10/21/19

INCUMBENCY CERTIFICATE

MUNICIPAL RENTAL AGREEMENT NO. 23712
GOVERNMENT LEASING, LLC ("OWNER")
CITY OF MARATHON ("RENTER")

I, the undersigned, the duly appointed, qualifying and acting Clerk or Secretary of the aforementioned Renter, do hereby certify:

1. Renter did at a regular or special meeting of the governing body of the Renter held on September 10, 2019 by motion duly made seconded and carried, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Municipal Rental Agreement No. 23712 (the "Agreement") on its behalf by the following named representative of the Renter:

(OFFICIAL WHO WILL SIGN THE AGREEMENT)

Charles Lindsey City Manager [Signature]
(typed/printed name) (official title) (signature)

2. A true, correct and complete copy of the minutes of the governing body is attached hereto.

IN WITNESS WHEREOF, I hereunto set my hand and the seal of the governing body of the Renter the day and year above written.

Diane Clavier
(Clerk's or Secretary's signature)

Diane Clavier, City Clerk
(typed/printed name & title)

10/21/19
Date

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-90**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A SERVICE CONTRACT WITH TRANSPONDR, LLC, AUTHORIZING THE CITY MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on July 18th, the City of Marathon (the "City") published A Request for Proposals for Emergency Communication Equipment and Services (the "Project"); and

WHEREAS, on August 20th, one bid was received by Transpondr I.L.C., (the "Contractor") and City staff subsequently reviewed and determined the bid was complete and the bidder was responsive and responsible; and

WHEREAS, staff recommends the 60 month subscription term at \$1,437 per month, plus a onetime set up and activation fee of \$999. If deployed, a onetime deployment fee, depending on notice (not more than \$5,000) and a \$2,100 per day fee upon service activation request.

WHEREAS, the City finds that accepting the bid and entering into a service contract 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:

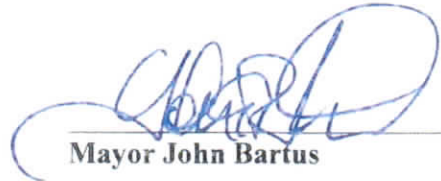
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Contract between the City and the Contractor for service, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The City Manager is authorized to execute the 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 10TH DAY OF SEPTEMBER, 2019.

THE CITY OF MARATHON, FLORIDA



Mayor John Bartus

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

THIS IS A SAMPLE OF THE INFORMATION REQUIRED ON YOUR PURCHASE ORDER AND IS NOT TO BE USED AS AN ACTUAL DOCUMENT. IF YOU DO NOT HAVE A STANDARD PURCHASE ORDER YOU MAY USE THE FOLLOWING ON YOUR LETTERHEAD AS A PURCHASE ORDER.

PURCHASE ORDER

DATE _____

PURCHASE ORDER NO. _____

AGENCY ISSUING PURCHASE ORDER ("RENTER"):

City of Marathon
9805 Overseas Highway
Marathon, FL 33050
(305) 743-0033

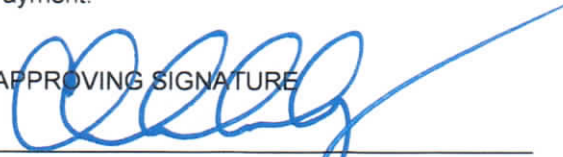
TO: Transpondr LLC
4175 Regency Park Court
Atlanta, GA 30341

SHIP TO:
Name: _____
Address: _____
City/State: _____
Contact: _____

QUANTITY ORDERED	EQUIPMENT DESCRIPTION	TOTAL PRICE
1	Equipment Description: Serial No. _____ [DESCRIBE EACH ITEM OF EQUIPMENT]	\$38,119.00

Renter anticipates entering into a Municipal Rental Agreement (the "Agreement") with Government Leasing, LLC ("Owner") concerning the Equipment described above. Upon execution and delivery of the documents required by the Owner and acceptance of the Equipment, the rights and obligations of the Renter under this purchase order shall be deemed assigned to Owner who will assume and agree to pay the obligations described herein (within 10 days after Lessor receives all required documentation) and upon such assignment, Renter shall make 60 payments to Owner, payable in Monthly payments of \$1,437.00 as described in the Agreement, plus a one time fee of \$999.00 due with the first Rental Payment.

APPROVING SIGNATURE



Charles Lindsey
(Director of Purchasing)
Authorized Personnel

(Authorized Personnel)

Please replace this page with Lessee's Balance Sheet and Profit and Loss Statement for each of the two (2) most recent fiscal years.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/2/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Williams, Turner & Mathis, Inc. 2009 Montreal Rd. Ste. B Tucker, GA 30084	CONTACT NAME: PHONE (A/C. No, Ext): (770) 934-3248	FAX (A/C. No): (770) 723-8081
E-MAIL ADDRESS:		
INSURED Transpondr, LLC 4175 Regency Park CT Atlanta, GA 30341		INSURER(S) AFFORDING COVERAGE
		INSURER A: Chubb Group of Ins Cos.
		INSURER B:
		INSURER C:
		INSURER D:
		INSURER E:
		INSURER F:
		NAIC #

COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:
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THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A X	COMMERCIAL GENERAL LIABILITY					
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		D94903804	8/9/2019	8/9/2020	EACH OCCURRENCE \$ 2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
						MED EXP (Any one person) \$ 5,000
						PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER POLICY PROJECT LOC					GENERAL AGGREGATE \$ 4,000,000
	OTHER					PRODUCTS - COMP/OP AGG \$ 4,000,000
						\$
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$
	ANY AUTO OWNED AUTOS ONLY	SCHEDULED AUTOS				BODILY INJURY (Per person) \$
	HIRE AUTOS ONLY	NON-OWNED AUTOS ONLY				BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						\$
	UMBRELLA LIAB	OCCUR				EACH OCCURRENCE \$
	EXCESS LIAB	CLAIMS-MADE				AGGREGATE \$
	DED RETENTION S					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					PER STATUTE OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A			E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$
A	Business Personal		D94903804	8/9/2019	8/9/2020	Property/Limit 150,000
A	RC		D94903804	8/9/2019	8/9/2020	Deductible 500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Government Leasing, LLC is additional insured in respect to liability and loss payee with respect to leased property.

CERTIFICATE HOLDER	CANCELLATION
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Government Leasing, LLC 830 Tenderfoot Hill Rd Ste 301 Colorado Springs, CO 80906	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>for Government Leasing</i>



Government Leasing LLC

Notice of Assignment

Date: 10/31/2019

Lessee: City of Marathon
For: 9805 Overseas Highway
Marathon, FL 33050

Re: Lease: Municipal Rental Agreement
Lease No: 23712
Lessor: Government Leasing, LLC
Date:

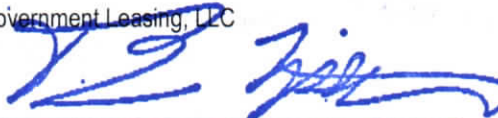
Dear Sir/Madam:

Please be advised that Government Leasing, LLC has exercised its right under the Lease described above and has assigned to First State Bank of Livingston, all rights and interest in the Lease, and the Equipment and payments described in the Lease. All payments that become due after the date of this Notice of Assignment are owned by and should be paid to:

Assignee's Name: First State Bank of Livingston
Assignee's Address: 112 W Polk
Livingston, TX 77351
Assignee's Phone No.: (936) 327-5211

Please acknowledge your receipt of this letter and that future payments are to be made as described herein by having a duly authorized official sign in the space provided below.

LESSOR: Government Leasing, LLC

By:  Date: 10/31/19
Tom Wittwer, Manager

LESSEE: City of Marathon

By:  Date: 11/6/19
Authorized Signature